

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

75-1133

B
Pg 5

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee,

-v-

JAMES ERNEST MANNING

Defendant,

STUYVESANT INSURANCE COMPANY

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

APPENDIX

M. ARTHUR HAMMER
Attorney for Appellant
9 East 40th Street
New York, N.Y. 10016

PAUL J. CURRAN, ESQ.
United States Attorney
Attorney for Plaintiff-Appellee
United States Courthouse
Foley Square
New York, N.Y. 10007

(4943)

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CERTIFIED COPY OF DOCKET ENTRIES IN DISTRICT
COURT - 75-1133

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE TYLER

69 CRIM. 1

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	FOR LXX
vs.	Title 21, Secs. 173 & 174 USC.
JAMES ERNEST MANNING	Unlawfully receiving, concealing
and	& facilitating the transportation
JANE DOE, a/k/a Audrey ABBOTT	and concealment of heroin and
	cocaine.
	ONE COUNT
	For Defendants:
	3-28-75

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk				
J.S. 3 mailed 1, 2 ✓	Marshal				
Violation	Docket fee				
Title					
See Complaint #52435					

DATE	PROCEEDINGS
1-3-69	Filed indictment.
1-8-69	Jane Doe a/k/a Audrey. Warrant of arrest ordered. METZNER, J.
1-8-69	JANE DOE a/k/a Audrey Bench warrant issued.
1-15-69	JAMES ERNEST MANNING- Pleading adj'd to 1-29-69. Bail continued (\$20,000) METZNER, J.
1-30-69	JAMES ERNEST MANNING-Pleads Not GUILTY-Bail continued. (\$20,000) motions rat. 2/25/69. METZNER, J.
1-30-69	JAMES ERNEST MANNING-Filed notice of appearance of Rubin & Gold 299 Broadway, New York, New York. 233-3330.
2-5-69	JAMES ERNEST MANNING Filed notice of Appearance of Rubin & Gold, 299 Broadway, N.Y.C. phone 233-3330
2-7-69	Filed warrant for arrest JANE DOE XXX a/k/a AUDREY 1-8-69 and returned unexecuted 1-30-69.

CERTIFIED COPY OF DOCKET ENTRIES IN DISTRICT
COURT - 75-1133

Page 2

9 Cr. 10

by Cr. 10

DATE	PROCEEDINGS
6-69	JAMES E. MANNING- Filed affdvt. & notice of motion for an order to suppress evidence ret. 2-25-69
6-69	JAMES E. MANNING- Filed affdvt. & notice of motion for an order for a B/P ret. 2-25-69
7-69	JAMES E. MANNING- Filed affdvt. & notice of motion for an order to inspect & copy etc. & memorandum of law in support of motion ret. 2-25-69
2-20-69	JAMES E. MANNING: Filed Govt's. (Sterling Johnson) affdvt. & memo of law in opposition to defts. motions for bill of particulars, discovery & suppression.
4-69	JAMES ERNEST MANNING- Filed memo endorsed on motion filed 2-17-69- Motion granted as to statements of deft. Manning, otherwise denied-so ordered- (mailed notice) WYATT, J.
6-69	JAMES E. MANNING- Filed deft's affdvt. in support of a motion to suppress evidence. <i>(see - 4-69-69 Wyatt)</i>
21-69	JAMES ERNEST MANNING- Hearing held & concluded on standing, Dec. Res. WYATT, J.
31-69	JAMES ERNEST MANNING- Hearing Held on motion to suppress- MOTION DENIED after hearing. Adj'd to 4-14-69 WYATT, J.
31-69	JAMES ERNEST MANNING- Docketed affdvt of Thomas Devine, Special Agent of the Bureau of Narcotics & Dangerous Drugs, in opposition to deft's motion to suppress.
31-69	JAMES ERNEST MANNING- Filed memo endorsed on motion filed 2-17-69- After hearing xxx the motion is denied for the reasons given in open Court. So ordered- (mailed notice) WYATT, J.
4-69	AUDREY ABBOTT: Indicted as Jane Doe, a/k/a Audrey: Brought before Judge Wyatt on a warrant. Legal Aid assigned as counsel. REMANDED in lieu of bail fixed at \$10,000. Adj. to 4-7-69, for pleading. WYATT, J.
6-69	AUDREY ABBOTT indicted as JANE DOE, a/k/a Audrey. Pleading adj'd to 4-9-69. Deft. remanded in lieu of \$10,000. Bail previously fixed. MOTLEY, J.
7-69	AUDREY ABBOTT- Filed CJA form 2 Order appointing counsel 4/7/69. Wilton Adler by Lawrence Kessler, phone Re 2-2963. (mailed copy to Adm Off Wash D.C.) MOTLEY, J.
9-69	AUDREY ABBOTT- PLEADS NOT GUILTY- Deft Remanded in lieu of bail previously fixed. Application for bail reduction adj'd to 4/10/69. MOTLEY, J.
8-69	JAMES ERNEST MANNING- Filed memo endorsed on motion filed 2-17-69- Re-Motion for Bill of Particulars is granted & denied as indicated (see memo in file) (mailed notice) WYATT, J.
14-69	JAMES ERNEST MANNING- Filed Bill of Particulars. B
11-69	Filed warrant for arrest dtd. 1-8-69 & executed on 4-4-69
17-69	AUDREY ABBOTT- Application for bail reduction DENIED. Assigned to Judge MOTLEY, for trial 5/12/69. MOTLEY, J.

CERTIFIED COPY OF DOCKET ENTRIES IN DISTRICT
COURT - 75-1133

Page 3

69Cr.10

DATE	PROCEEDINGS
4/18/69	JAMES E. MANNING:- Motion of defendants counsel to be relieved as counsel - DENIED. Assigned to Judge Motley for trial 5/12/60. MOTLEY, J.
5-12-69	AUDREY ABBOTT: Government's Motion for severance, no opposition by deft. Motion GRANTED CANNELLA, J.
5-13-69	JAMES E. MANNING- Bench Warrant ordered. CANNELLA, J.
5-16-69	JAMES E. MANNING- Govt's application for forfeiture of bail- GRANTED, with the stay extended to May 29, 1969 CANNELLA, J.
5-20-69	AUDREY ABBOTT-Released on own recognizance. DISCHARGED from custody of U.S. Marshal. CANNELLA, J.
5-26-69	<i>Audrey Abbott</i> Filed remand dated 4-4-69 R.O.B. CANNELLA, J. 5-20-69
6-4-69	JAMES ERNEST MANNING-Filed order Upon all the proceedings heretofore had herein & upon the application of Sterling Johnson Jr. A.U.S.A. for S.D.N.Y. & pursuant to rule 46(f) F.R.C.P. it is hereby Ordered that the bail posted for the aforesaid deft on indictment 69 Cr.10 be forfeited. dtd 6-4-69. CANNELLA, J.
6/19/69	Final Transcript of record of proceedings, dated 3/21/69
9-16-69	JAMES ERNEST MANNING-Brought to Court on a warrant. Referred to Judge WEINFELD for trial. bail fixed at \$100,000. Deft REMANDED in lieu of bail. MOTLEY, J.
9-24-69	JAMES ERNEST MANNING - Filed Warrant of Arrest, dated 5/13/69. Warrant executed on 9/16/69.
10-3-69	JAMES ERNEST MANNING- Filed affdvt & notice of motion to vacate the forfeiting the bail dtd. 6-4-69
10-14-69	Filed Transcript of record of proceedings, dated 5-12-69 and of proceedings, dated 3-21-69
10-14-69	Filed affdvt. of Sterling Johnson, Jr. Asst. U.S. Atty in opposition to motion to vacate etc. (Not to file for 60 days)
10-9-69	before CANNELLA, J. - Jury trial begun. as to deft JAMES E. MANNING
10-10-69	trial continued- Motion for directed of acquittal DENIED
10-11-69	Trial continued & concluded. Jury verdict GUILTY. Nov. 18, 1969 set for sentencing. Pre-sentence report ordered. CANNELLA, J.
10-29-69	JAMES ERNEST MANNING: Filed OPINION # 36276. Application extending the time to file a motion for a new trial is denied. CANNELLA, J.
11-17-69	JAMES ERNEST MANNING - Filed Memorandum # 36314 - CANNELLA, J. - "Petitioner's motion for a judgment of acquittal, or new trial pursuant to Rules 29(c) and 33 of the Federal Rules of Criminal Procedure, is denied. ***** The Clerk of the Court is directed to send a copy of this memorandum to the petitioner. So ordered. CANNELLA, J. (SEE Memorandum & Order)(Copies prepared for def't & def't's counsel).

CERTIFIED COPY OF DOCKET ENTRIES IN DISTRICT
COURT - 75-1133

69 Cr. 10

Page 4

69 Cr. 10

DATE	PROCEEDINGS
	<u>Filed second offender information.</u>
6-69	JAMES ERNEST MANNING: (atty presnet)/Deft. admits previous conviction of 8-3-65.
18-69	JAMES ERNEST MANNING: Filed Judgment (atty present) it is adjudged that the def't is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS. CANNELLA, J.
18-69	Issued commitment & copies.- Deft. advised of his right to appeal CANNELLA, J.
18-69	Filed 1 manila envelope (Courts D 1) ordered sealed & impounded (sent to Cashier's room 602 to be put into the vault) CANNELLA, J.
21-69	JAMES ERNEST MANNING: Filed Memorandum Opinion #36,335 attached to motion filed 10-3-62 -***the motion to set aside the forfeiture is denied-so ordered- (mailed notice) CANNELLA.
25-69	JAMES ERNEST MANNING-Filed Notice of Appeal to the U.S.C.A. second circuit from the judgment of 11-18-69. in forma pauperis.
1-69	JAMES ERNEST MANNING-Filed Notice of Appeal to the U.S.C.A. second circuit from an order denying the motion to vacate the forfeiture of bail that was entered on 11-21-69 in the opinion #36335 by Judge CANNELLA. \$5.00 paid.
1-69	JAMES MANNING: <i>Filed Commitment and General Return, Deft. Delivered to the Department of Corrections</i> WIG
1-69	JAMES MANNING: <i>Filed Remand Order 9-16-69</i>
6-70	<i>Filed Transcript of record of proceedings, dated 12-18-69</i>
1-70	The record on appeal has been certified and transmitted to the U.S.C. of Appeals for the Second Circuit this 6th day of January 1970.
13 1970	<i>Filed Transcript of record of proceedings, dated 9, 10, 14 & 11-18-1969</i>
-8-70	AUDREY ABBOTT: /entered and filed nolle prosequi RYAN, J.
2 1970	<i>Filed Transcript of record of proceedings, dated 3-16-69</i>
2-70	AUDREY ABBOTT - Filed CJA Voucher for compensation and expenses of appointed counsel. (orig. mailed Adm. Off. Wash. D.C.) BRYAN, J.
	<i>Filed Transcript of record of proceedings, dated</i>
5-70	Filed notice that record has been certified and transmitted to the U.S.C.A.
-19-72	Filed Deft. James Ernest Manning-Memorandum motion fro a reduction of sentence.
15-72	JAMES E. MANNING - <i>Filed order that def't be permitted to proceed in forma pauperis</i> CANNELLA, J. <i>Wm. 225 Application (Att)</i>

CERTIFIED COPY OF DOCKET ENTRIES IN DISTRICT
COURT - 75-1133

JUDGE CANNELLA

Page 5

69 CRIM

DATE	PROCEEDINGS
	BOTH DEFENDANTS:
1-16-73	Filed judgment from the U.S.C.A. for the Second Circuit. Judgment of the S.D.N.Y. is affirmed. A. DANIEL FUSARO, Clerk, U.S.C.A. Judgment Entered 11-20-73. Raymond F. Burghardt, Clerk, S.D.N.Y.
-2-75	JAMES E. MANNING - Filed Govts notice of motion for forfeiture of appearance bond.
//14/75	Filed papers from Commissioner Bishopp: (1) complaint (2) deft's affdvt. and order appointing counsel (3) warrant of arrest (4) appearance bond.
-20-75	JAMES ERNEST MANNING - Filed stip. adjourning Motion for forfeiture from 1-16-75 to 1-23-75....Cannella, J.
-21-75	JAMES ERNEST MANNING - Filed Reply affdvt. of Robert M. Jupiter in opposition to cross motion.
1-24-75	JAMES ERNEST MANNING -- Filed stip. and order that time within which the atty's can serve a memorandum is extended to Jan. 31-75....Cannella, J.
31-75	JAMES ERNEST MANNING - Filed memorandum in support of cross motion for remission of bail forfeiture.
3-11-75	JAMES ERNEST MANNING - Filed memorandum and order #42025 On the instant motion the Govt. pursuant to Fed. R. Crim. P. 46(e) for the entry of judgment of default against the Stuyvesant Ins. Co. ***the surety has move for remission of all or part of the \$20,000 bail so forfeited***Accordingly, submit an order and decree of judgment in conformity providing for remission of \$2,000 of the \$20,000 bail forfeited....Cannella, J... Mailed notice. <i>Given to clerk & signed.</i>
3-24-75	JAMES ERNEST MANNING - Filed order that the U.S.A. recover Judgment against the Stuyvesant Ins. Co. in sum of \$18,000***Cannella, J... Judgment #75,251.... <i>M/N</i>
-28-75	JAMES ERNEST MANNING - Filed notice of appeal from order and decree of judgment dated 3-21-75 and entered 3-24-75... Copy given to U.S. Atty.
1-4-75	<i>Check supersedeas bond in amount of \$15,000 or judgment Total for # 26, 230.00</i>

4 THE
RAYMOND F.
[Signature]
Deputy Clerk

GENERAL DOCKET, U.S. COURT OF APPEALS - 34115

A. O. 147 (July 1953)

*
GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

APPEAL FROM

SOUTHERN DISTRICT

CASE NO.

34115

TITLE OF CASE

ATTORNEYS FOR APPELLANT-
appellee

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES ERNEST MANNING and JANE DOE, a/k/a
AUDREY ABBOTT,

Defendants,

JAMES ERNEST MANNING,

Defendant-Appellant,

THE STUYVESANT INSURANCE COMPANY, and its
Agent, JACK MEYER,

Appellants.

CR.

(& in 34416)

TRANSFERRED FROM
MR 3494United States Attorney
U.S. Courthouse
Foley Sq., N.Y. 10007

ATTORNEYS FOR APPELLANT

JAMES ERNEST MANNING

~~Rubin & Gold~~
~~299 Broadway~~
~~New York, N.Y. 10007~~Gerald Walpin (appointed)
575 Madison Ave. (Manning)
New York, N.Y. 10022~~James Ernest Manning (pro-so)~~
~~#69370--Box-FAB~~
~~Atlanta, Georgia-30315~~

NO. BELOW: 69 Cr. 10

JUDGE BELOW: J..M. CANNELLA

DATE OF JUDGMENT:

NOTICE OF APPEAL FILED:

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
Jan. 6'70	Filed record (original papers of District Court)	\$25 00		
1-9-70	Ref. Acc't 100509 (472) (8/103)		25 00	

GENERAL DOCKET, U.S. COURT OF APPEALS - 34115

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE
SECOND CIRCUIT

CASE NO. 34115 || U.S.A. v. James Ernest Manning, et al.;

DATE	FILINGS—PROCEEDINGS
-3-69	Filed statement of docket entries and copy of notice of appeal (Manning)(& in 34416)
-8-69	Filed statement of docket entries and copy of notice of appeal (Styvesant Ins. Co. and its Agent, Jack Meyer & Manning)(& in 34-16)
-6-70	Filed order extending time to file record to 1-6-70 (& in 34416)
6-70	Filed record (original papers of District Court)(& in 34416)
-16-70	Filed order granting transcription of minutes at expense of United State (& in 34416)
-17-70	Filed CJA-11 appointing Gerald Walpin, Esq. to represent James E. Manning, appellant (& in 34416)
-17-70	Copy 1 CJA-11; set CJA-12 w/instructions mailed to Gerald Walpin, Esq.
-17-70	Copy 3 CJA-11 mailed to A.O. (& in 34416)
-17-70	Copy 4 CJA-11 mailed to James E. Manning, appellant (& in 34416)
-13-70	Filed minutes transcribed by order of this court of 2-16-70 (& in 34416)
-20-70	Filed order granting transcription of minutes at expense of U. .S (& in 34416) (Hearings held before Judge Wyatt 3-21-70 and 3-31-70)
-3-70	Filed minutes transcribed by order of this court of 3-20-70
-17-70	Filed motion for extension of time to file appellant's brief & appendix with proof of service (& in 34416) (Manning)
-20-70	Filed order granting motion for extension of time to date of this order to file brief & appendix (& in 34416) (Manning)
-21-70	Filed order that the appellee file its brief by 9-25-70; argument of appeal be heard during week of 10-5-70 (& in 34416)
-25-70	Filed supplemental record (original papers of district court) (& in 34416)
-25-70	Filed order removing original record
-25-70	Filed appendix, appellant with proof of service (& in 34416) (Manning)
-25-70	Filed brief, appellant (Manning) with proof of service (& in 34416)
-25-70	Filed order removing original record, appellee (& in 34416)
-25-70	Filed page proof copy, brief, appellee (& in 34416)
-25-70	Filed brief, appellee (& in 34416)
-25-70	Filed reply brief, appellant with proof of service (& in 34416) (Manning)

GENERAL DOCKET U.S. COURT OF APPEALS - 34115

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

CASE NO. 34415

U.S.A. v. James Ernest Manning, et al.

DATE	FILINGS-PROCEEDINGS	Filed
4-6-70	Argument heard (by: Lumbard, Moore & Smith, CJS) (Manning)	
4-26-71	Judgment Reversed & Action Remanded, Lumbard, ChJ. (Manning)	
4-26-71	Dissenting in separate opinion, Moore, CJ (Manning)	
4-26-71	Filed judgment (Manning) VACATED 7-15-71	
4-29-71	Filed motion to issue mandate forthwith (Manning)	
4-5-71	Filed affidavit in opposition to motion to issue mandate forthwith with proof of service	
4-12-71	Filed motion to stay issuance of mandate and extension of time to file petition for rehearing	
4-13-71	Filed order denying motion to issue mandate forthwith	
4-14-71	Filed affidavit in response to affidavit in opposition to motion to issue mandate forthwith with proof of service	
4-19-71	Filed affidavit in opposition to motion to stay issuance of mandate	
4-20-71	Filed order granting motion for leave to file a petition for rehearing by 4-23-71 and to stay issuance of mandate, etc.	
4-23-71	Filed 4 page proof copies petition for rehearing and rehearing in banc	
4-26-71	Filed petition for rehearing and for rehearing in banc	
4-19-71	Filed order granting petition for rehearing and for rehearing in banc; reconsideration will be had on record and briefs heretofore filed without oral argument, except parties, if either of them so desires, may serve and file further briefs by 6-1-71	
4-26-71	Filed order removing transcript, appellant	
6-1-71	Filed brief, respondent with proof of service (on rehearing)	
4-15-71	On Rehearing in banc - judgment of District Court is affirmed, Friendly CJ	
4-15-71	Concurring in separate opinion, Oakes, CJ	
4-15-71	Dissenting in separate opinion, Lumbard, CJ	
4-15-71	Dissenting in separate opinion, Smith, CJ	
4-15-71	Filed order on rehearing in banc	
4-15-71	Filed judgment	
6-17-71	Filed copy of notice extending time to file petition for writ of certiorari in Supreme Court to 9-13-71	

J. C. P. & U

GENERAL DOCKET, U.S. COURT OF APPEALS - 34115

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

CASE NO. 34415	U.S.A. v. James Ernest Manning, et al.		
PAGE 4			
DATE	FILINGS—PROCEEDINGS		Filed
9-7-71	Filed notice of filing of petition for writ of certiorari		
9-28-71	Filed application and order (endorsed) granting leave to appellant's counsel to remove from Clerk's office, transcripts of hearing, etc. (Manning)(& in 34416)		
12-16-71	Certified original record & proceedings for: Solicitor General (& in 34416)		
12-20-71	Filed certified copy of order of Supreme Court denying petition for writ of certiorari (& in 34416)		
12-20-71	Issued copy of order of Supreme Court denying petition for writ of certiorari (& in 34416)		
1-5-72	Filed receipt by Supreme Court of original record (& in 34416)		
1-28-72	Original record returned to district court (& in 34416)		
2-10-72	Filed receipt of return of original record to district court (& in 34416)		
2-22-72	Filed copy of CJA-12 of approved voucher for \$1,356.26(& in 34416)		
2-22-72	Original CJA 12 and copy 2 CJA-11 mailed to A.O. (& in 34416)		
11-15-73	Issued Mandate (opinion & judgment) (& in 73-34416)		

GENERAL DOCKET, U.S. COURT OF APPEALS - 34116

m A. O. 1 (July 1953)

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

APPEAL FROM

SOUTHERN DISTRICT

CASE NO.

34116

TITLE OF CASE

ATTORNEYS FOR APPELLANT-
appellee

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES ERNEST MANNING and JANE DOE, a/k/a
AUDREY ABBOTT,

Defendants,

JAMES ERNEST MANNING,

Defendant-Appellant,

THE STUYVESANT INSURANCE COMPANY, and its
agent, JACK MEYER,

Appellants.

R. TRANSFERRED FROM (filed in 34415)
MR 3494SEE DOCKET SHEET 34415
FOR ATTY'S AND ENTRIESATTORNEYS FOR APPELLANT
STUYVESANT INS. CO. & ano.

No. BELOW: 69 Cr. 10

JUDGE BELOW: J.M. CANNELLA

DATE OF JUDGMENT:

NOTICE OF APPEAL FILED:

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
Jan. 6'70	Received docket fee	\$25 00		
1-9-70	By Acct. 7100869 (4702) (J. H.)		15 00	

A-11

GENERAL DOCKET, U.S. COURT OF APPEALS - 34116

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
CIRCUIT

CASE NO.	
DATE	FILINGS—PROCEEDINGS
1-6-70	Received docket fee (filed in 34415)

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-v-

JAMES ERNEST MANNING and
JANE DOE, a/k/a Audrey,

INDICTMENT

68 Cr. ____

Defendants
-----x

The Grand Jury charges:

On or about the 8th day of October, 1968, in the
Southern District of New York,

JAMES ERNEST MANNING and
JANE DOE, a/k/a Audrey,

the defendants, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug; to wit, approximately 113.32 grams of heroin hydrochloride and 67.60 grams of cocaine hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for

A-13

INDICTMENT

medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174)

/s/ (Illegible)
Foreman

/s/ Robert M. Morgenthau
United States Attorney

ENDORSEMENTS ON INDICTMENT

JAN 8 - 1969

James Lee a/k/a Audrey
 brought to court ordered. *Watt, J.*
(JL)

JAN 15 1969

James Ernest Manning - Pleading
 adj. to 1/29/69. Bail continued
 (\$20,000) *Watt, J.*

JAN 30 1969

James Ernest Manning - Pleads not guilty - Bail continued.
 (\$20,000) motion set. 2/5/69.
(JL) *Watt, J.*

MAR 21 1969

James Ernest Manning on standing
 Hearing held & concluded. Dec. Rec.
Watt, J.

MAR 31 1969

James Ernest Manning - Hearing held on
 motion to suppress. Motion denied after
 hearing. Advs. to 4/14/69. *Watt, J.*

APR 4 - 1969

AUDREY AUGUST, indicted as JANE DOE,
 while AUDREY, BROUGHT TO COURT ON A
 WARRANT. LEGAL AID ASSIGNED AS COUNSEL.
 REMAINED IN LIEU OF BAIL FIRED AT
 \$10,000. Advs. to 4/14/69 FOR PLEADING.
(JL) *Watt, J.*

ENDORSEMENTS ON INDICTMENT

APR 7 - 1969

Audrey Abbott motioned re Jane Doe, aka/a Audrey
 Pleading now to 4/9/69. Debt Remanded in lieu
 of \$10,000 Bail previously fixed.

MOTLEY, J. *[Signature]*

APR 9 - 1969

Audrey Abbott - PLEADS NOT GUILTY - DEBT REMANDED IN LIEU
 OF BAIL PREVIOUSLY FIXED. Application for Bail Reduction
 now to 4/10/69.

MOTLEY, J. *[Signature]*

APR 17 1969

Audrey Abbott - Application for Bail Reduction DENIED.
 Assigned to Judge Motley for Trial 5/12/69.

MOTLEY, J. *[Signature]*

APR 18 1969

JAMES E. MANNING - DEBT'S COUNSEL motioned to
 BE RELIEVED AS COUNSEL DENIED.
 Assigned to Judge Motley for Trial 5/12/69.

MOTLEY, J. *[Signature]*

MAY 12 1969

Audrey Abbott. Court motion for adjournment
 no opposition by *[Signature]* Motion Granted.

Cannell, J. *[Signature]*

MAY 13 1969

James E. Manning.

Search Warrant - *[Signature]* - *[Signature]*

ENDORSEMENTS ON INDICTMENT

JUL 16 1969

James E. Manning -

Def's. application for forfeiture of
 bail - Granted. ~~Amount~~ extended. ~~to~~ ^{to} May 29, 1969.

Cannella, J.

JUL 20 1969

Abbott -

Released on own recognizance
 Discharged from custody of Marshal Cannella, J.

SEP 16 1969

JAMES ERNEST MANNING - BROUGHT TO COURT ON A
 WARRANT. Referred to Judge Hennrich for Trial. Bail
 FIXED AT \$100,000. REMANDED TO CUSTODY OF BAIL.

1107 CC. Y.

SEP 19 1969 JURY EMpaneled TRIAL BEGON
 AS TO DEFT. JAMES E. MANNING CANNELLA J.

ENDORSEMENTS ON INDICTMENT

CT 10 1969 TRIAL CONTD GOVT RESTS, MOTIONS FOR
DIRECTED OF ACQUITTAL DENIED

CANNELL J

CT 14 1969 TRIAL CONTD, DEFT. REST MOTIONS RENEWED
+ DENIED

CANNELL J

SUMMATIONS BY COUSSEL
CHARGE BY THE COURT
MARGARET SWORN

JURY VERDICT DEFT. MANNING GUILTY AS
CHARGED JURY POLLED, NOV. 18, 1969 SET FOR
SENTENCING PRE SENTENCE REPORT ORDERED
REMANDED

CANNELL J

NOV 18 1969 SENTENCE MANNING LATTY. A. ELLER
(PRESENT) PREVIOUS NARCOTICS CONVICTION ADMITTED
(SEE ATTACHED INFORMATION)

12 YEARS IN CUSTODY OF CITY. GENERAL
DEFT. REMANDED REVISED OF RIGHT TO
APPEAL

CANNELL J.

REST. P.D.
S. JOHNSON

Appearance Bond

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
V.

JAMES ERIEST MANNING,

APPEARANCE BOND
FOR

No. H-1-775. B-16-19642.

JAMES ERIEST MANNING.

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of TWENTY THOUSAND-----dollars (\$ 20,000.00).

The conditions of this bond are that the defendant JAMES ERIEST MANNING, is to appear before ERALE N. BISHOPP, , United States Commissioner for the Southern District of New York on 10/23/68 at 2:00 o'clock, p.m. in Room 115, /, at US Courthouse, Foley Sq., NYC, , and in the United States District Court for the Southern District of New York at NEW YORK, N.Y., , and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in the above entitled matter as may be given or issued by the commissioner or by the United States District Court for the Southern District of New York or any other United States District Court to which the defendant may be removed or the cause transferred; that the defendant is not to depart the Southern District of New York , or the jurisdiction of any other United States District Court to which the defendant may be removed or the cause transferred after he has appeared in such other district pursuant to the terms of this bond, except in accordance with such orders or warrants as may be issued by the Commissioner or the United States District Court for the Southern

District of New York or the United States District Court for such other district; that the defendant is to abide any judgment entered in such matter by surrendering himself to serve any sentence imposed and obeying any order or direction in connection with such judgment as the court imposing it may prescribe.

If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any United States District Court having cognizance of the above entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such United States District Court against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

This bond is signed on this 16th day of October, 1968,

at NEW YORK, N.Y.

Name of Defendant.

JAMES HERBERT HANNING

Address. Apt. 1-D, 30 West 151st Street, Bronx, New York 10456

Name of Surety. The Stuyvesant Insurance Company

Address. 877 Brook Avenue, Bronx, N. Y. 10451

By:

Attorney-in-Fact
Signed and acknowledged before me this

16th day of

October, 1968

Approved:

Paul H. Bishop
United States Commissioner, S.D.N.Y.

POWER OF ATTORNEY

POWER OF ATTORNEY

THE STUYVESANT INSURANCE COMPANY

New York, N. Y.

New York Bail Bond Department, 877 Brook Avenue, Bronx, New York 10451

ITEM 1	ITEM 2 NOT VALID FOR BOND IN EXCESS OF	ITEM 3 NOT VALID IF USED AFTER	ITEM 4 EXECUTED AND NOTARIZED	POWER NUMBER
6 ABRAHAM GOLDSTEIN <i>Jack Meyer</i> AS ATTORNEY-IN-FACT STATE NEW YORK	\$25000 AND NO CENTS	33069 MO. DAY YR.	7 568 MO. DAY YR.	153017

KNOW ALL MEN BY THESE PRESENTS.

SECTION 1 That The Stuyvesant Insurance Company, a New York corporation does hereby make, constitute and appoint the party(s) as set forth in Item One (1) above as its true and lawful attorney-in-fact with full power and authority hereby confirmed to execute on behalf of the said Company, as sole surety only subject to the limitations as herein set forth, a criminal and/or civil Bail Bond on behalf of

ITEM FIVE (5)

James HERNEST MANNING
 Name of Principal to be inserted

Insert Bond Amt.
Void If Not Completed

to be given to people of the STATE OF NEW YORK and/or the UNITED STATES of AMERICA.

20000

SECTION 2 That the authority of such attorney-in-fact to bind the Company shall not in any event exceed the amount set forth in Item Two (2) above on any one bond and the said attorney-in-fact is hereby authorized to insert in Item Five (5) the name of the person on whose behalf this bond is given.

SECTION 3 This power is not valid unless used on or before the date set forth in Item Three (3) above and can only be used once.

SECTION 4 The authority of such attorney-in-fact is limited to appearance bonds and cannot be construed to guarantee for failure to provide payments, back alimony payments, fines or wage law claims.

SECTION 5 This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the Board of Directors of the Company on November 19, 1958:

ARTICLE III. OFFICERS

Section 6 Resident Officers and Attorneys-In-Fact. The President, the Executive Vice-President, or any Vice-President shall have power and authority to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-In-Fact; and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts or indemnity, and other writings obligatory in the nature thereof, and attach the seal of the Company thereto, except such seal shall not be necessary when any bond or other obligation shall be executed under a power of attorney to which the seal of the Company is attached and such power of attorney attached to such bond or other obligation.

SECTION 6 This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolution duly adopted by the Board of Directors of the Company on November 19, 1958:

"Resolved, that the signature of the President, or any Executive Vice-President or any Vice-President and the seal of the Company may be affixed by facsimile on any power of attorney, and the signature of the Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile on any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

SECTION 7 IN WITNESS WHEREOF, THE STUYVESANT INSURANCE COMPANY has caused these presents to be signed by its Vice-President and its corporate seal to be hereunto affixed on the date set forth in Item Four (4) above.

SECTION 8 DO NOT ACCEPT A POWER OF ATTORNEY WHICH BEARS ANY ALTERATIONS, ERASURE OR INTERLINEATION.

THE STUYVESANT INSURANCE COMPANY

STATE OF NEW YORK
 COUNTY OF NEW YORK } ss.

By:

Edwin P. Rubenstein
 Vice-President

On the month day and year as set forth in Item Four (4) above before me personally came Edwin P. Rubenstein to me known, who, being by me duly sworn did depose and say that he resides in the City of Newark, State of New Jersey; that he is the Vice-President of the Stuyvesant Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the corporation and that the seal affixed to said instrument is such corporate seal and that the corporate seal was affixed to the said instrument pursuant to authority given by the Board of Directors; that the corporation is duly and legally authorized to transact business in the District of Columbia and all states and is duly and legally authorized to issue recognizances and bail bonds in the District of Columbia and all states and has complied with and is now complying with the provisions of the Act of Congress of August 13, 1894, and the insurance laws of the said states allowing certain corporations to be accepted as Surety on Bonds.

SWORN TO BEFORE ME ON THE DATE SET FORTH
 IN ITEM FOUR ABOVE.

Michael Shapiro
 Notary Public

NOTE

- (1) A separate power of attorney must be attached to each bond executed.
- (2) Powers of attorney must not be returned to Attorney-in-fact but should remain a permanent part of court records.

My Commission Expires March 30, 1970

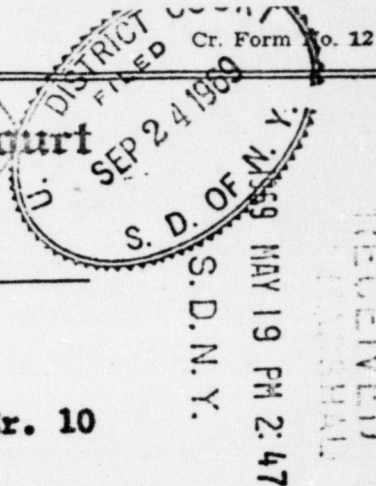
WARRANT OF ARREST

32433
Warrant for Arrest of Defendant (Rev. 7-52)

Johnston
USAA United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

v.

- JAMES ERNEST MANNING +

No. 69 Cr. 10

To: United States Marshal or any other authorized officer

You are hereby commanded to arrest **James Ernest Manning** and bring him forthwith before the United States District Court for the **Southern** District of **New York** in the city of **New York** to answer to an **indictment** charging him with **receiving, concealing, facilitating the transportation of a quantity of unlawfully imported cocaine** in violation of **Title 21, U.S.C. §§ 173 & 174**

Dated at New York, N.Y.

JOHN LIVINGSTON

on May 13 1969

Clerk.

Bail fixed at \$.....

By *J. Manning* Deputy Clerk.

RETURN

Southern District of New York SS

Received the within warrant the 19 day of May 1969 and executed same.
By arresting the within-named **James Ernest Manning** on 9/15/69 at #30 West 181st St., New York, NY

Anthony P. Marasco, U.S. Marshal
S DNY

By *Vincent J. Hickey*
Vincent J. Hickey Deputy

'Insert designation of officer to whom the warrant is issued, e. g., "any United States Marshal or any other authorized officer"; or "United States Marshal for District of"; or "any United States Marshal"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Federal Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

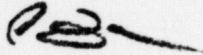
U.S. MARSHAL, SDNY.
ORIGINAL

(Crim
100-5519129

16

WARRANT OF ARREST

SEP 16 1969

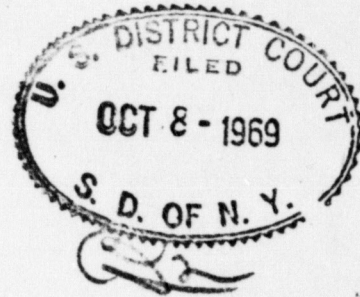


DETT.
BROUGHT TO COURT ON A WARRANT.
Bail fixed at \$100,000. Referred to Judge
Winfield for trial. Remanded in lieu
of bail.

Mottley, J.

jws

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
UNITED STATES OF AMERICA

vs.

69 Cr. 10

JAMES ERNEST MANNING and
JANE DOE, a/k/a Audrey
Abbott,

Defendants.

-----X
Before:

HON. JOHN M. CANNELLA,
District Judge.

New York, May 12, 1969;
10.30 o'clock a.m.
(Room 1506)

APPEARANCES:

ROBERT M. MORGENTHAU, ESQ.,
United States Attorney,
for the Government:
Sterling Johnson, Jr., Esq.,
Assistant United States Attorney, of Counsel.

ALVIN GELLER, ESQ.,
Attorney for Defendant Manning.

LAWRENCE KESSLER, ESQ.,
Legal Aid Society,
Attorney for Defendant Audrey.

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THE CLERK: United States of America
against James Ernest Manning.

Is the Government ready?

MR. JOHNSON: The Government is ready,
your Honor.

MR. GELLER: Your Honor, my name is
Alvin Geller. I am with the firm of Rubin & Gold
at 299 Broadway.

Your Honor, the defendant is not ready.
May I explain why, your Honor?

THE COURT: Well, this is a trial part.
I don't know what you are talking about. We don't
take applications here for adjournment. That's
done in 318.

MR. GELLER: May I go up to 318?

THE COURT: No, you were sent here as
a ready case and unless you have some real legal for
not proceeding at this time I would like to know.
I mean, what is your reason.

MR. GELLER: Your Honor, I have two
reasons. The last time the case was on before
Judge Motley in Room 318, after we left the court-
room Mr. Manning told me that he was not desirous

of our firm representing him, that he would attempt to get a new lawyer.

THE COURT: Yes?

MR. GELLER: I didn't see Mr. Manning until he said he could not get a lawyer and he wants us to represent him, and we will represent him, your Honor, and we shall represent him.

THE COURT: All right.

MR. GELLER: However, your Honor, I haven't seen the man for three months. There were minutes on a motion to suppress that I feel I should order. However, your Honor, my major reason is this -- and I am being perfectly candid with the Court -- for the last two days, your Honor, I have had a strep throat, I have been running a low-grade temperature, I have been taking antibiotics since Friday night. I feel I can't go on with this case. I will respectfully ask for a one weeks' adjournment until next Monday and I will directly start then, your Honor.

THE COURT: Here is the point: This case was sent to me by Judge Motley because somebody is in jail here.

MR. JOHNSON: The co-defendant, your Honor.

THE COURT: The co-defendant is in jail.

Now, the application was made for her to be released on bond, and Judge Motley, although sitting in a civil case said, "Well, I will not reduce the bail. However, I will take the case myself, even though I am not in the criminal part."

Now, then, she called me and found out that I was in the criminal part and said, "Look, I have this case and I promised these people a trial and they are going to get a trial on Monday. Now, would you take the case?"

I said, "I have other cases set up."

As you see, these other lawyers were here. The fact is if she is on trial and wants to give somebody a trial, we will go ahead and do it. Under the circumstances, I fail to see how I can do it at this point.

MR. GELLER: Your Honor, I don't feel I can represent this man. I don't feel well. I have been sick. I spent the weekend in bed. Since Saturday night and all day Sunday I have been

taking pills. I don't feel I can go ahead with this trial.

The co-defendant was arrested very recently and I understand, your Honor, the Government is going to move for a severance and there is an excellent chance she is going to be a Government witness.

THE COURT: Are you sure that is not what is troubling you?

MR. GELLER: No, your Honor.

THE COURT: That is not troubling you at all? This is what I am hearing here in open court for the first time, as far as I am concerned. I knew that Mr. Kessler represented her and walked in. And I said, "What have you got here?"

I said, "I want to get you out of here to go back to 318."

He said somebody was representing this woman and there would be a severance. That is as much as I know about it.

MR. GELLER: I know I am going to try this case. I am not avoiding my responsibility; I will try the case. I am asking for a few

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days' adjournment so I can come into court and feel at least physically able to go ahead, your Honor.

THE COURT: You see, one time you are talking about you didn't think you are going ahead with it and then you finally decided you were going to go ahead. This was three weeks ago -- three weeks ago that this happened. Why didn't you come in at that time and let somebody know you weren't going to go ahead with the thing?

MR. GELLER: Your Honor, Mr. Manning told me he was going to have a different lawyer as of today.

THE COURT: A different lawyer? So you didn't think you were going to try the case, did you?

MR. GELLER: Until Saturday, when he came into my office and told me that he couldn't get a lawyer and he wants us to represent him, and I am willing to represent him. I want to represent him, I want to dispose of the matter. Would your Honor put it on for the latter part of this week?

THE COURT: You see, what disturbs me is every time we walk out of here -- you think this

is nothing and you have probably given it no thought -- this means now I walk back to my chambers, we opened the court here, it costs, according to Judge Croake, about \$3000 to open this door. What we are doing here is sitting around waiting for you to get well.

Now, that's the point of the matter.

How can we operate a court when we are ready to go ahead and you come in and say, "Now, look, at 10.30 I can't go ahead with it now"?

MR. JOHNSON: Your Honor, I wouldn't be able to try this case next week, or maybe the first two weeks in June. I start a trial before Judge Cooper starting the 19th and I will be on trial approximately a week, a week and a half. After that I have a case before Judge Tyler and I had another case sent out -- I think it's to Judge Tyler -- for the first two weeks in June.

So if defendant is not tried today, I don't know when we will be able to try this case. The co-defendant Audrey Abbott would be in jail until some time later in June or early July.

MR. GELLER: Could we put the case down for Thursday of this week, your Honor? I am

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confident -- I will make a representation I will go ahead on Thursday of this week.

THE COURT: You do that, but, you see, we have a fixed schedule here.

MR. GELLER: I understand.

THE COURT: And this is a borrowed case which I took because Judge Motley said she was in a civil case and would I take it since it's a criminal case.

Now, on Thursday my clerk indicates to me by handing up the calendar that we have the United States v. Gutman at 10.30 a.m.

How about you? Can you come in here tomorrow? These flu things usually last a day or so. Why can't you be prepared tomorrow? You have been sick now for two or three days. You should be better by tomorrow.

MR. GELLER: I hope so, your Honor.

THE COURT: All right, tomorrow morning at 10 a.m. It is a convenience for the Court, but I appreciate your feelings about it. So we will put it off until tomorrow morning at 10.30.

In the meantime, Mr. Kessler, what can

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I do for you?

MR. JOHNSON: The Government moves to sever the defendant Audrey Abbott.

MR. KESSLER: No opposition.

THE COURT: There being no opposition, the motion is granted. The case is severed.

MR. JOHNSON: Thank you, your Honor.

THE COURT: Mr. Kessler, are you able to give me another name for this woman now?

MR. JOHNSON: Audrey Abbott.

THE COURT: A-b-b-o-t-t?

MR. JOHNSON: That is correct.

THE COURT: All right; thank you.

MR. JOHNSON: Tomorrow morning at 10.30?

THE COURT: Yes, at 10.30 in this part.

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Julian Wolf
Official Court Reporter
R. A. Parker Court

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

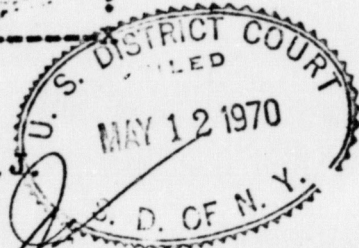
3 -----X
4 UNITED STATES OF AMERICA

5 vs.

69 Cr. 10

6 JAMES ERNEST MANNING.
7 -----

8
9 Before: HON. JOHN M. CANNELLA, D.J.



10
11 New York, May 16, 1969;
12 3.00 p.m.

13 APPEARANCES:

14 ROBERT M. MORGENTHAU, ESQ., United States Attorney for
the Government;
15 Sterling Johnson, Jr., Esq., Assistant U.S. Attorney,
of Counsel.

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17 ALVIN GELLER, ESQ., Attorney for Defendant.
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Handwritten numbers in circles: 34, 35, and 7.

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2 THE CLERK: United States of America vs. James
3 Ernest Manning.

4 Is the government ready to proceed?

5 MR. JOHNSON: The government is ready.

6 THE CLERK: Defense?

7 THE COURT: This is an application for the
8 forfeiture of the bond, and of course he hasn't appeared
9 and a week has gone by, so I will hear anything you have
10 to say.

11 MR. GELIER: Your Honor, the bail in this case is
12 \$20,000. I have been in contact with the surety numerous
13 times. We have spoken to the mother of the defendant.
14 She has told us that he is in New York City; he has called
15 her once or twice during the week; he is in the City
16 presently. Presently there are three or four people who
17 the surety has employed to find this man. Your Honor,
18 I would respectfully ask the Court, in view of the amount
19 of the bond, and in view of the fact that we know Manning
20 is in the City and he will be brought in, I would ask the
21 Court for a two-week adjournment to give us an opportunity
22 to produce this man.

23 Your Honor, the mother is over 70 years of age,
24 she is a decent woman, and although I can state for the
25 record that she is legally obligated on the bond, I do

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not know that to be true, but I understand that, in a sense, it is her responsibility, and the financial damages will accrue to her. I would urgently ask the Court to give us one two-week period to bring this man into court, he is in the City, and I know it will be done because there are people looking for him now. And we will be ready on that day to go to trial if that is the desire of Mr. Johnson.

MR. JOHNSON: Your Honor, the government's application is to forfeit the bail. This matter appeared for trial on May 12th, and at that particular time the defendant appeared in court with his attorney, and because Mr. Geller was sick it was adjourned until the next day, May 13th. At that time the defendant failed to appear and your Honor ordered a bench warrant. The government's application was for a forfeiture of bail at that particular time, but your Honor was not disposed to grant this forfeiture.

It is now Friday, and the defendant has not shown, and the government's application is to forfeit the bail at this particular time.

THE COURT: Well, the picture is not actually as bleak as Mr. -- what is it? Geller?

MR. GELLER: Geller.

THE COURT: Mr. Geller. You remind me of my

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colleague over in the other court who passed away only recently.

It isn't as bleak as you see it. I don't say that this a representation, because I haven't looked it up recently, but I went through this many times before when I was an assistant. This doesn't actually take place until 30 days after the forfeiture, under the statute.

MR. GELLER: That is the State rule, your Honor.

THE COURT: Yes. You look it up, but I am sure that that is the fact. So you are getting not only the two weeks you ask for but you are getting an additional two weeks. So under the circumstances I do declare the bond to be forfeited. But you have your rights under the statute, as I understand it, to the additional 30 days.

MR. GELLER: Your Honor, I spoke to the surety, and I imagine he is familiar with the law regarding this, and it was his impression that once your Honor forfeits the bail, that --

THE COURT: Well, look up that section of the bail section. I haven't looked it up recently, but I am almost certain that you have that right under the bail section to come in in 30 days from the time of the forfeiture.

MR. GELLER: And that will act as an automatic

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2 vacater of the bail?

3 THE COURT: I don't know what the exact effect of it
4 is. You can look it up easy enough.

5 Have you got the Code here? It wouldn't be in
6 Title 18, would it?

7 MR. GELLER: Your Honor, may I make an alternative
8 suggestion. Your Honor has forfeited the bail. Would
9 your Honor stay the forfeiture for a period of 30 days?
10 And the State will automatically expire unless this defendant
11 is brought in.

12 THE COURT: The only trouble is then that will in-
13 crease it to 60 days if I do that.

14 MR. GELLER: Will your Honor then stay it two weeks
15 and give us an opportunity to bring this man in?

16 THE COURT: I don't see any harm in staying it for
17 two weeks, so I will give you the extra time.

18 MR. GELLER: Thank you, your Honor.

19 THE COURT: I will make it the 29th. It is stayed
20 until May the 29th. If at that time he is not produced,
21 then the forfeiture will go through by virtue of law.

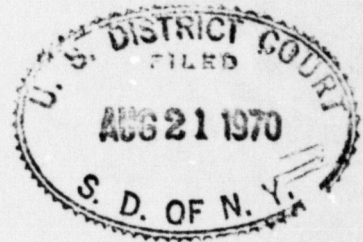
22 MR. GELLER: Thank you, your Honor.

23 MR. JOHNSON: Thank you, your Honor.

24 MR. GELLER: Good afternoon.

25 - - -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

vs.

JAMES ERNEST MANNING.

69 Cr. 10

Before: HON. JOHN M. CANNELLA, D.J.

New York, May 29, 1969;
2.00 p.m.

APPEARANCES:

ROBERT M. MORGENTHAU, ESQ., United States Attorney for the
Government;
Sterling Johnson, Jr., Esq., Assistant U.S. Attorney,
of Counsel.

ALVIN GELIER, ESQ.,
Attorney for Defendant.

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THE CLERK: United States of America vs. James Ernest Manning. Is the government ready to proceed?

MR. JOHNSON: The government is ready, your Honor.

THE CLERK: Defendant Ready?

MR. GELLER: The defendant is not present in court, your Honor.

THE COURT: Well, the only reason this case is called, as I recollect the previous history of it, is that when the case was assigned to me this defendant was here with his lawyer and the lawyer indicated that he wasn't feeling well and wanted an adjournment, and I granted an adjournment of one day. On the following day, when he appeared, when the lawyer appeared, the defendant didn't appear. I then issued a bench warrant and said I would hold up the forfeiture until today.

MR. JOHNSON: Your Honor, you issued the bench warrant on May 13th, if my record of it is correct, and you said you would hold up the forfeiture until May 16th. On May 16th you issued the forfeiture and you stayed the execution until the 29th.

THE COURT: That is right, I stand corrected, because I don't have any record before me. I was relying entirely on my memory. And that is the status of the case.

MR. GELLER: That is correct, your Honor.

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MR. JOHNSON: And the 29th is today.

MR. GELLER: Would your Honor permit Mr. Johnson and myself to approach the bench?

THE COURT: Yes.

MR. GELLER: Thank you.

(Conference at the bench between Court and counsel off the record.)

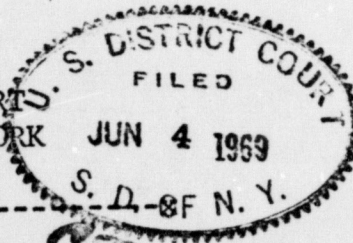
THE COURT: The application that the forfeiture be stayed further is denied. The government will submit an order.

MR. JOHNSON: Thank you, your Honor.

MR. GELLER: Good afternoon.

THE COURT: Good afternoon.

- - -

ORDER FORFEITING BAIL 6/4/69SJ
52435UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

ORDER

v. :

69 Cr. 10

JAMES ERNEST MANNING, :

Defendant. :

-----X

Upon all the proceedings heretofore had herein,
and upon the application of Sterling Johnson, Jr., Assistant
United States Attorney for the Southern District of New
York, and pursuant to Rule 46(f), Federal Rules Criminal
Procedure, it is hereby

ORDERED that the bail posted for the aforesaid
defendant, JAMES ERNEST MANNING, on Indictment 69 Cr. 10 be
forfeited.

Dated: New York, N. Y.,

June 4, 1969.*John M. Connolly*

U.S.D.J.

MICROFILM
JUN 4 - 1969

DEFENDANT'S NOTICE OF MOTION FOR ORDER TO VACATE
ORDER FORFEITING BAIL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

-----X

UNITED STATES OF AMERICA,

-v-

NOTICE OF MOTION.

JAMES ERNEST MANNING,

69 CR. 10.

Defendant.

-----X

PLEASE TAKE NOTICE, that upon the annexed affidavit of ALVIN GELLER, duly sworn to the 2nd day of October 1969 and upon all the proceedings had herein a motion will be made on behalf of the defendant in the United States District Court, Southern District of New York, U.S. Courthouse, Room 318 Foley Square, in the Borough of Manhattan, City and State of New York on the 14th day of October 1969 at 2:15 P.M. o'clock in the afternoon, or as soon thereafter as council can be heard, for an order directing that the order of the Honorable John M. Cannella dated June 4, 1969 forfeiting the bail in the instant case be vacated and set aside.

Dated New York, New York.
1969.

To: Hon. Robert Morganthan
United States Attorney,
Southern District of
New York

Yours, etc.
Rubin & Gold,
Attorney for
Defendant.
James Manning.
299 Broadway
New York, N.Y.

AFFIDAVIT OF ALVIN GELLER, FOR DEFENDANT,
IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK,
-----X

UNITED STATES OF AMERICA,

-v-

AFFIDAVIT.

JAMES ERNEST MANNING,

Defendant.
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

ALVIN GELLER, being duly sworn, deposes and says:

Your deponent is associated with the Law firm of Rubin & Gold, 299 Broadway, New York, N.Y. attorney's for the defendant JAMES ERNEST MANNING.

On January 3, 1969 the defendant was indicted for a violation of Title 21, United States Code, Section 173 and 174.

On May 29, 1969 the defendant failed to appear and the bail posted was forfeited. The amount of the bail was Twenty Thousand dollars (\$20,000.00.).

On June 4, 1969 the Honorable John M. Cannella signed an order forfeiting the bail.

On May 29, 1969 when the Honorable John M. Cannella orally forfeited the bail, he stated that when and if the defendant was

AFFIDAVIT OF ALVIN GELLER, FOR DEFENDANT,
IN SUPPORT OF MOTION

taken into custody he, Judge Cannella, would entertain a motion to vacate the bail forfeiture order.

On September 16, 1969 the defendant was taken into custody pursuant to a warrant of arrest and was lodged in the Federal House of Detention on West Street in New York City. On that day he was arraigned before the Honorable Constance Baker Motley in the room 318 at the United States Courthouse and bail was set in the amount of One Hundred Thousand (\$100,000.00.) Your deponent spoke to the defendant and was told by the defendant that he, the defendant, was financially destitute and was desirerous of a speedy trial.

Your deponent asked that the case be sent out to a trial part as quickly as the Court calendar would permit.

The Government has indicated to your deponent that they are ready for trial and it is expected that a trial date will be fixed shortly.

Upon information and belief your deponent believes that the Government has not been prejudiced by virtue of the fact that the defendant jumped bail. All Government witnesses who were available on May 29, 1969 are presently available.

Upon information and belief the surety employed informers

AFFIDAVIT OF ALVIN GELLER, FOR DEFENDANT,
IN SUPPORT OF MOTION

who discovered the whereabouts of the defendant.

Upon information and belief the surely conveyed the location where the defendant was apprehended to Federal Agent Devine and Marshall Monahan.

Upon information and belief the defendant was apprehended as a direct result of the information conveyed by the surety to agent Devine and Marshall Monahan.

WHEREFORE, your deponent respectfully prays for an order directing that the order of the Honorable John M. Cannella dated June 4, 1969 forfeiting the bail in the instant case be vacated and set aside.

/s/ Alvin Geller
ALVIN GELLER.

Verified October 2, 1969

AFFIDAVIT OF JACK MEYER, FOR DEFENDANT,
IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

-v-

AFFIDAVIT.

JAMES ERNEST MANNING,

Defendant.

-----x

JACK MEYER, being duly sworn deposes and says:

That I am a bail bond agent of the Stuyvesant Insurance Co. and subsequent to the arrest of the said defendant JAMES ERNEST MANNING, I acting on behalf of the Stuyvesant Insurance Co. posted bail in the sum of twenty thousand dollars.

On May 29, 1969 the defendant failed to appear and bail was forfeited.

On June 4, 1969 the Hon. John M. Connella signed an order forfeiting the bail.

On September 16, 1969 the defendant was taken into custody pursuant to a warrant of arrest and was lodged in Federal House of Detention.

This arrest was brought about by information given to Deputy Marshall Monahan by myself advising him as to the exact location of Mr. Manning at the precise moment. Previous to the arrest of Mr. Manning you deponent cooperated fully with agent Devine and

AFFIDAVIT OF JACK MEYER, FOR DEFENDANT,
IN SUPPORT OF MOTION

Deputy Marshall Monahan in an attempt to apprehend the defendant. On occasions accompanying Deputy Marshall Barfoot to several locations where Mr. Manning was supposed to be (based on information gotten from paid informers.)

WHEREFORE your deponent respectfully prays for an order directing that the order of the Honorable John M. Connella dated June 4, 1969 forfeiting the bail in the instant the case be vacated and set aside.

/s/ JACK MEYER

Verified October 2, 1969

-----X

-v-

Defendant.

69 Cr. 10

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

STERLING JOHNSON, JR., being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney in the office of Robert M. Morgenthau, United States Attorney for the Southern District of New York and am in charge of the above prosecution.

2. The above one count indictment was filed on January 3, 1969, charging the defendant with concealing a large quantity of narcotics. On January 30, 1969, the defendant pleaded not guilty and was released on bail set at \$20,000. On May 12, 1969, this matter was scheduled to go to trial before Judge Cannella. On the day of trial, the defendant's attorney requested and received an adjournment until May 13, 1969. The defendant was instructed to return for trial that day.

AFFIDAVIT OF STERLING JOHNSON, FOR GOVERNMENT,
IN OPPOSITION TO MOTION

On May 13, 1969, Manning failed to appear for his trial. A bench warrant was ordered. The Government's application to forfeit bail was granted. However, execution of the order was suspended until May 29, 1969. In an order signed June 4, 1969, the aforesaid bail was forfeited.

3. After a long and extensive search, on September 16, 1969, the defendant was arrested. Bail was fixed in the amount of \$100,000 and the matter referred out to trial.

PRESENT PROCEEDINGS

7 4. The Surety's motion to vacate the aforesaid forfeiture should be denied. The surety has failed in its burden to establish that justice does not require enforcement of this forfeiture. See 46(f)(2), F.R. Cr. P., United States v. Accardi, 241 F. Supp. 119, 120 (S.D.N.Y. 1964), aff'd sub nom., United States v. Peerless Ins. Co., 343 F. 2d 759 (2d Cir.), cert. denied, 382 U.S. 832 (1965). To the contrary, the need for enforcement here is affirmatively demonstrated by the fact that the defendant purposely became a fugitive on the day of his trial, and the length of time he remained a fugitive. The time and trouble to which the Government was put in locating the defendant and the absence of a satisfactory explanation for the extensive default requires that the motion to vacate

AFFIDAVIT OF STERLING JOHNSON, FOR GOVERNMENT,
IN OPPOSITION TO MOTION

the aforesaid forfeiture be denied.

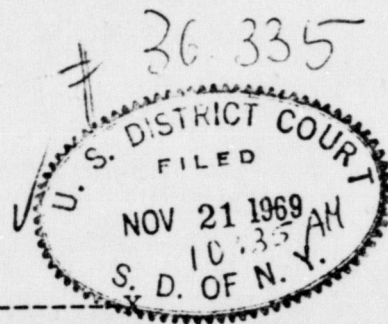
WHEREFORE, it is respectfully requested that the
motion to vacate be denied.

/s/ STERLING JOHNSON, JR.
Assistant United States Attorney

Verified October 14, 1969.

OPINION OF CANNELLA, D.J. (36335) DENYING VACATING OF
ORDER OF FORFEITURE OF BAIL 11/20/1969

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

-against-

69 Cr. 10

JAMES ERNEST MANNING,

Defendant.



Appearances:

Robert M. Morgenthau, U.S. Attorney for the
Southern District of New York, Sterling Johnson, Jr., Asst.
U.S. Attorney of counsel, for the United States.

Rubin & Gold, by Alvin Geller, New York City,
for surety.

CANNELLA, J.

The motion on behalf of the Stuyvesant Insurance
Co., made pursuant to Rule 46(f)(2) of the Federal Rules of
Criminal Procedure, for an order setting aside the forfeiture
of a bail bond in the above-named action is denied.

The defendant was arrested and arraigned in
October, 1968. His bail was set by a United States Commissioner
at \$20,000. The Stuyvesant Insurance Co. posted a bail bond

OPINION OF CANNELLA, D.J. (36335) DENYING VACATING OF
ORDER OF FORFEITURE OF BAIL 11/20/1969

in that amount. The surety's agent, one Jack Meyer, testified at a hearing on the motion, held November 18, 1969, that he posted the bond at the time of arraignment after being promised by the defendant that his mother would put up as collateral a deed to a house she owned. It was learned shortly thereafter that she did not own the house, and no actual collateral was ever put up by the defendant. Despite this fact and also the fact that Meyer was aware of a potential mandatory minimum sentence of ten years in the case, ¹ he made no attempt to surrender the defendant at any of the five court appearances ² he made prior to May 13, 1969, the date on which trial was to commence. Any lack of concern on Meyer's part was apparently founded on the representations of defendant's attorney and other persons that the defendant was reliable and a "good risk". The defendant, however, did fail to show up on May 13th. This conduct on the part of the defendant was a willful disregard of his obligation to appear.

1. Defendant, who was indicted for violation of 21 U.S.C. §§ 173-174, had a previous narcotics conviction.
2. The defendant appeared in court on January 30, March 21, 31, April 18 and May 12, 1969.

OPINION OF CANNELLA, D.J. (36335) DENYING VACATING OF
ORDER OF FORFEITURE OF BAIL 11/20/1969

The surety was given a period of some two weeks in which to find the defendant. When he did not appear on May 29, 1969, this court forfeited the bail, signing an order to that effect on June 4, 1969. The surety made no application at the time of forfeiture for extra time in which to attempt to locate the fugitive. The surety did, however, remain on the lookout for him. Information ³ it supplied to federal agents on September 16, 1969 led directly to the defendant's arrest on that day.

Rule 46(f)(2) reads:

Setting Aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

In exercising its broad discretion under this Rule, ⁴ the court does not find herein "that justice does not require the enforcement of the forfeiture". The court does not intend to dictate facts for a bondsman to consider in posting a bond. On the other hand, the court does intend not to act under Rule 46(f)(2) as a surety for the surety where the bondsman's

3. This information was nothing more than the fact that the defendant was at his apartment in the morning of September 16th.
4. See, e.g., United States v. Egan, 394 F.2d 262, 266-67 (2d Cir. 1968).

OPINION OF CANNELLA, D.J. (36335) DENYING VACATING OF
ORDER OF FORFEITURE OF BAIL 11/20/1969

judgment proves faulty and is found by the court to have been grossly negligent, which is the case here.

In view of the facts of this case and the principles regarding the setting aside of a forfeiture enunciated in this court's opinion of September 23, 1969 in United States v. Fook Dan Chin, 5 ____ F. Supp. ____, the motion to set aside the forfeiture is denied.

So ordered.

Dated: New York, N.Y.

November 20, 1969.

John M. Cannella
U.S.D.J.

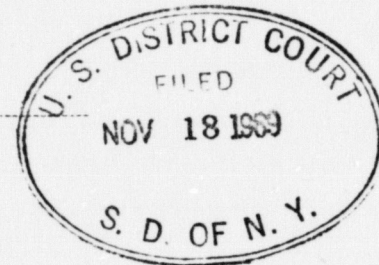
5. In that case, the surety moved for a remission under Rule 46(f)(4). The court granted a partial remission upon a showing of a specific post-forfeiture expenditure by the surety in attempting to locate the fugitive. Here bondsman Meyer was vague about any such expenditures.

JUDGMENT AND COMMITMENT

JUDGMENT AND COMMITMENT (Rev. 12-66)

Cr. Form No. 25

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK



United States of America

v.

JAMES ERNEST MANNING

No. 69 Cr 10

On this 18th day of November, 1969 ~~XXIX~~¹⁹ came the attorney for the government and the defendant appeared in person and¹ by counsel

It Is ADJUDGED that the defendant upon his plea of² not guilty, and a verdict of guilty by a jury

has been convicted of the offense of unlawfully, wilfully and knowingly receiving, concealing and facilitating the transportation and concealment of heroin and cocaine after the said narcotic drugs had been imported and brought into the United States contrary to law. (Title 21, United States Code, Sections 173 and 174)

-AND-

the defendant James Ernest Manning, duly represented by counsel, having admitted he is the same person previously convicted on ONE separate Federal Narcotic Violation

as charged¹

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of²

TWELVE(12)YEARS.

~~IT IS ADJUDGED THAT~~

MICROFILM

NOV 21 1969

It Is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

John M. Cannella

United States District Judge.

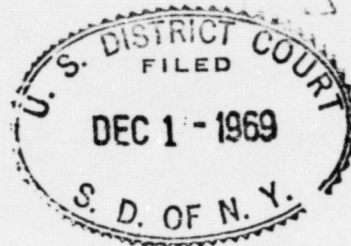
~~THE COURT RECOMMENDS THAT~~

[Signature]
Clerk.

¹ Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." * Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. * Insert "in count(s) number _____" if required.

* Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law; * Enter any order with respect to suspension and probation. * For use of Court wishing to recommend a particular institution.

NOTICE OF APPEAL FROM ORDER DENYING
VACATING OF BAIL FORFEITURE 12/1/69



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

-----x
UNITED STATES OF AMERICA. :
 :
-against- : 69 Cr. 10
 :
JAMES ERNEST MANNING, :
 :
 :
Defendant. :
 :
-----x

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE, that James Ernest Manning, the defendant in the above-entitled action, The Stuyvesant Insurance Company, the surety on the bail bond for the defendant, and its agent, Jack Meyer, hereby appeals to the Court of Appeals of the United States for the Second Circuit, from an order denying the motion to vacate the forfeiture of bail that was entered on the docket on November

21, 1969 in Opinion # 36335 by Judge Cannella.

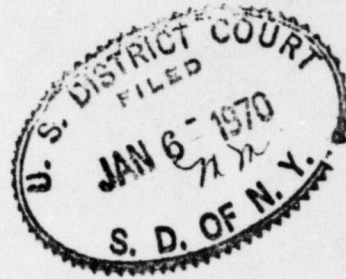
Dated: the 1st day of December, 1969.

Yours, etc.,

Monahan for
Rubin & Gold
299 Broadway
New York, New York.
233-3330.

TO: Hon. Robert M. Morgenthau
United States Attorney
Southern District of New York.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

vs.

69 Cr. 10

JAMES ERNEST MANNING and JANE
DOE, a/k/a AUDREY,

Defendants.

Before:

HON. JOHN M. CANNELLA,
District Judge.

New York, December 18, 1969.

APPEARANCES:

ROBERT M. MORGENTHAU, ESQ., United States Attorney,
for the Government;
By: Sterling Johnson, Jr., Assistant United States Attorney?
ALVIN GELLER, ESQ., Attorney for Defendant Manning.

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2 MR. GELLER: Your Honor, I call Mr. Meyer.

3 J A C K M E Y E R, called as a witness by the

4 defendant, being first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. GELLER:

6 MR. GELLER: Your Honor, may we excuse any other
7 witnesses who may be called in this proceeding?

8 THE COURT: Yes. So ordered.

9 Q What is your profession, Mr. Meyer?

10 A I'm a bail bond agent for the Stuyvesant Insurance
11 Company.12 Q Are you authorized to execute bail bonds both
13 in the federal court and the State of New York?

14 A I am.

15 Q And you are an agent, you say, of the Stuyvesant
16 Insurance Company?

17 A That's correct.

18 Q As the authorized agent for the Stuyvesant Insurance
19 Company did you write a bail bond to secure the release of
20 one James Ernest Manning?

21 A I did.

22 Q Do you recall the amount of that bond?

23 A \$20,000.

24 Q And Stuyvesant Insurance Company is the surety;
25 is that correct?

mcn

Meyer-direct

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Q Of course you are aware that there came a time when Mr. Manning failed to appear for the trial; is that right?

A That is also correct.

Q And subsequent to that Judge Cannella issued an order forfeiting the bail?

THE COURT: Can you put some dates in this?

MR. GELLER: Yes.

THE COURT: The document is here and has all the dates. When was the bond put up, for example, have you got the papers here? Let's put it in the record. Put the number of the indictment in the record.

MR. GELLER: 69 Cr. 10.

THE COURT: There is one defendant named herein, namely, James Ernest Manning?

MR. GELLER: Two defendants named in the indictment, the defendant Jane Doe, also known as Audrey.

THE COURT: This bond covered James Ernest Manning?

MR. GELLER: Yes.

THE COURT: Look on the back and see when bail was set.

MR. JOHNSON: Your Honor, I might be able to help. When the defendant was arrested originally bail was fixed by the United States Commissioner. The indictment was returned

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Meyer-direct

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and the defendant pleaded not guilty.

THE COURT: The defendant was arrested and brought before the Commissioner when? And this is all the subject of a stipulation which is entered into between the parties.

MR. JOHNSON: Yes, your Honor. I think it was October 16, your Honor, 1968, that the defendant appeared in the offices of Rubin & Gold. He was arrested and taken before the United States Commissioner. That was either October 16 or October 17, 1968. Bail was fixed in the amount of \$20,000 by the Commissioner.

THE COURT: Was that bail furnished?

MR. JOHNSON: That bail was furnished, I think, your Honor.

MR. GELLER: Yes.

THE COURT: When was the bail furnished?

THE WITNESS: At that time.

THE COURT: On the 16th or 17th?

THE WITNESS: That is right.

MR. JOHNSON: On January 30th the defendant pleaded not guilty to Indictment 69 Cr. 10 and the bail that was fixed by the Commissioner was continued by the Court in Room 318.

THE COURT: Who was the judge?

MR. JOHNSON: I don't have the judge's name at that particular time, your Honor.

mcn

Meyer-direct

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1 THE COURT: Doesn't the notation on the indictment
2
3 show who the judge was?

4 MR. JOHNSON: Judge Metzner, your Honor.

5 THE COURT: All right. Was there more than one
6 time that he appeared thereafter?

7 MR. JOHNSON: Yes, your Honor. Do you want the
8 dates that he appeared in court?

9 THE COURT: They should be on the back of the
10 indictment.

11 MR. JOHNSON: Yes, your Honor, and I also have
12 my own record.

13 MR. GELLER: January 30, 1969, your Honor.

14 THE COURT: That is when Judge Metzner continued
15 the bail; is that it?

16 MR. GELLER: Right. March 21, 1969. On March 21
17 there was a motion to suppress on the issue of standing and
18 a hearing held and concluded before Judge Wyatt.

19 THE COURT: When did he appear the next time?

20 MR. GELLER: March 31, 1969. Another hearing
21 was held on a motion to suppress before Judge Wyatt.

22 THE COURT: Then he appeared again?

23 MR. GELLER: On April 18, 1969, Mr. Manning appeared
24 before Judge Motley in Room 318.

25 THE COURT: What happened at that time?

mcn

Meyer-direct

6

1 MR. GELLER: Your Honor, at that time defense
2
3 counsel made a motion to be relieved as counsel and that motion
4 was denied.

5 THE COURT: And the next appearance?

6 MR. GELLER: The next appearance was May 12, your
7 Honor. Mr. Manning appeared for trial before your Honor.

8 THE COURT: As I recall it, at that time you said
9 you were sick or something and I said I'd let you come back
10 in a day or two. You had a cold or something.

11 MR. GELLER: The following day, your Honor.

12 THE COURT: I said, "All right. Since we can't start
13 now we will start tomorrow." Is that it?

14 MR. GELLER: That's correct.

15 THE COURT: On the 13th, then, he didn't show up?

16 MR. GELLER: That's correct.

17 THE COURT: After that he was picked up as a fugitive
18 was he?

19 MR. JOHNSON: That's correct.

20 THE COURT: When was he picked up?

21 MR. GELLER: I believe it was September 16 of
22 1969.

23 THE COURT: All right. Now you can develop anything
24 you want because I think I have all the dates that I need.

25 MR. GELLER: There are two other dates, your Honor.

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Meyer-direct

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Q Mr. Meyer, are you aware that on June 4 the Hon. John M. Cannella signed an order forfeiting the bail that your company had furnished in this case?

A I was notified of that.

Q And on September 16 Mr. Manning was once again taken into custody?

A Yes.

Q Mr. Meyer, incidentally, has your company paid on the order directing the forfeiture of the bail?

A No, we are waiting for these proceedings to be terminated.

Q Can you tell his Honor what efforts you made, if any, to secure the appearance of Mr. Manning in this court?

THE COURT: Since this is non-jury, essentially I'm the one who knows what I'm interested in finding out and I would like to know when you wrote the bond. Was it on October 16 or 17 of 1969?

THE WITNESS: That's right.

THE COURT: Did you get collateral from him?

THE WITNESS: No, your Honor. I was promised collateral by his mother, a deed to a house, which I never received.

THE COURT: What kind of a house was it?

THE WITNESS: It was supposed to be an apartment

1 mcn

Meyer-direct

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2 house where she lived.

3 THE COURT: What was the address?

4 THE WITNESS: I don't recall the exact address.

5 It is in the East Bronx. I have the phone number. I don't
6 have --7 THE COURT: Did you make any inquiries about
8 whether in fact she owned the house?9 THE WITNESS: What happened on the occasion was
10 this: I was called by the attorneys and I came over and I met
11 Mr. Manning and the attorneys just at the moment after he was
12 being arraigned, and the attorneys said: Well, Mr. Manning
13 has notified us that his mother owns a house, and Manning
14 said, "Yes, I've got a house. Get me out right away."15 The attorney said, "This man has been a resident
16 here."17 It was one of those things, like in a moment, and
18 after that I was, like, left holding the bag.19 THE COURT: What I want to know is this: There must
20 have come a time that you were at least curious as to whether
21 this woman in fact owned a house --

22 THE WITNESS: Yes.

23 THE COURT: -- what kind of house it was, go up and
24 look at it or get some information about it.

25 THE WITNESS: Yes.

mcn

Meyer-direct

9

1 THE COURT: When did you do that?

2 THE WITNESS: Within the next two or three days.

3 THE COURT: In other words, we are talking now
4 about the end of October or the beginning of November of 1968?

5 THE WITNESS: Yes.

6 THE COURT: You went up and took a look at the
7 house; right?

8 THE WITNESS: No, I spoke to Mr. Manning and I said,
9 "Well," you know, "where is the deed to the house?"

10 THE COURT: What did he say?

11 THE WITNESS: Then it turned out that she didn't
12 really own the house. She was supposed to own the house. She
13 didn't actually own it. She lived --

14 THE COURT: Why didn't you tell the attorneys or
15 him, "I have no collateral for the bond and I'm surrendering
16 him"?

17 THE WITNESS: That is what I should have done. I
18 have done business with the attorneys for a number of years.
19 They told me there is no chance of his running; that he has
20 been a resident for a number of years and that the case
21 looks hopeful. I said I'll go along with it. Everybody I
22 spoke to that knew Mr. Manning, knew him for twenty and thirty
23 years said, "He has never been any place. You've got nothing
24 to worry about." It is not a good precedent to surrender
25

mcn

Meyer-direct

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anybody.

THE COURT: I have been sitting for over fifteen years and if I had a dollar for every one surrendered I'd be a rich man. Many people do it. Even sureties that are not professional sureties come down and say, "We don't want the responsibility any more." It is a very simple act and there is practically nothing to doing it.

If I understand your testimony, the collateral you took was the attorney's word to you was that he was a good fellow and that he would be back.

THE WITNESS: That's correct. I'm solely responsible for any moneys that are paid. It is out of my own pocket.

THE COURT: I realize that.

I'm sorry to have interrupted you, Mr. Geller. Would you continue.

Q Would you tell his Honor what efforts you made to obtain or secure the appearance of Mr. Manning after the bail was forfeited in this case?

A Well, I must have spoken to several hundred people. I got in touch with informants, police officers, federal officers. I myself had gone to many of his haunts. Ultimately I did locate, you know, Mr. Manning and I told the marshals on the morning that they apprehended him exactly where he was and the marshals went up and apprehended him.

A Yes.

A Well, I learned that he was at several specific addresses previous to the time that I learned he was at a specific address at a specific moment.

A On the morning of September 16 I received a phone
that Mr. Manning was at 30 East 180th Street at this
t and he would be there all day.

A Yes, I notified Deputy Marshal Tom Monahan of the
ant Squad.

A Yes, he was taken into custody leaving that address
the marshals had knocked on the door of the apartment
he was supposed to be, where he was staying as a fact.

A Yes.

mcn

Meyer-direct

12

Q Had you been in touch with Marshal Monahan and Agent Devine prior to September 16th in an attempt to get Manning back?

A Yes, at a minimum of two, three times a week from the time he left till the time that he was captured. In other words, I was getting information periodically as to his movements and as to his whereabouts and as I got them I notified the authorities as to where he was and what he was doing as closely as I could, but that morning was the first time I knew where he was at the time and that he wasn't leaving at a period. I knew that he was staying at a certain bar. Then I knew he had gone to his mother's house. Then I knew he had taken a trip. I kept getting information. Of course I got it minutes late, sometimes hours late, but I was reasonably well informed as to his whereabouts, you know, all the time starting from a short time after he forfeited his bail. He didn't show up in court.

Q What time did you get the phone call on September 16th?

A I would say between eight and nine in the morning.

Q What time did you call Marshal Monahan?

A Between nine and ten.

Q Did you speak to him personally?

A Yes, I did.

A-67

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mcn

Meyer-direct
cross

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Q Had you spoken to him before September 16th?

A Yes. I told him I expected this information.

MR. GELLER: I have no further questions, your Honor.

CROSS EXAMINATION BY MR. JOHNSON:

Q Mr. Meyer, who furnished you this information that Mr. Manning was at the location which you gave to Mr. Monahan?

A Well, if I have a matter of choice I'd prefer it not be for public consumption.

MR. GELLER: I would object basically to it for the same reason. The government ---

THE COURT: If you do that it is going to weaken his testimony because, after all, it must have some effect on the fact if he doesn't want to divulge who gave him the information.

MR. GELLER: Then would your Honor ask, as you asked me during the course of the trial, that Mr. Johnson not make this information, for whatever reason. I don't know why he would, but just for the record.

THE COURT: I would say that he can't go out and make it known just for the fun of it, but if for example he finds out that a federal crime was committed he has a duty to pursue it. I can't tell him to avoid his duty.

MR. GELLER: No, your Honor.

mcn

Meyer-cross

14

1 THE WITNESS: No, not at all.

2
3 THE COURT: I'm talking about Johnson, not about
4 you.

5 MR. GELLER: All right.

6 THE COURT: So, under those conditions if you want
7 to get him to answer you do it. On the other hand, if he
8 wants not to answer that question I have indicated to you that
9 it is going to affect the weight of his testimony.

10 THE WITNESS: I promised my informant, who is a
11 legitimate citizen, that I would not divulge their identity.
12 If I could personally divulge it to you I'd certainly do it.
13 They are not criminals, anywhere involved criminally.

14 MR. GELLER: May I consult with Mr. Meyer for
15 about five seconds?

16 THE COURT: Yes.

17 (Pause)

18 Q Who did you receive that information from?

19 A Miss Gloria Robinson.

20 Q Had you received the information personally or did
21 she telephone?

22 A Telephone.

23 Q Is Miss Gloria Robinson going to be in court today?

24 A No, she is not.

25 Q Where does Miss Gloria Robinson live?

1 mcn

Meyer-cross

15

2 MR. GELLER: I object.

3 A I can bring her to you. I can put you in touch
4 with her. There is no problem.

5 Q Where does she live?

6 A In the Bronx.

7 Q What is her address?

8 A I don't know her exact address. I know her address
9 for business, if that would help. I know the address of
10 her business. I don't know the address of her home.

11 Q What is the address of her business?

12 A Broadway between 164th and 165th Street. I think
13 it is 3927 Broadwayi

14 Q What is her occupation?

15 A She is an insurance broker.

16 Q When you first furnished the bond for Mr. Manning
17 do you know where he lived?

18 A This was all -- the moment I walked in I found out.

19 Q Did you know where he lived?

20 THE COURT: Were you told, in effect? Because
21 he couldn't know of his own knowledge. Did you have some
22 hearsay as to where he lived?

23 THE WITNESS: Yes. When I got there I was told he
24 lived on 181st Street in the Bronx or he lived in his mother's
25 -- I know he lived in the Bronx.

1 mcn

Meyer-cross

16

2 Q Do you recall the address?

3 A No, I don't recall the address. I knew he lived
4 in the Bronx. I knew where he hung out.

5 Q From October 16, 1968, until May 13 or after May
6 13 when Mr. Manning's bail was forfeited did you ever go to
7 his apartment or his residence?

8 A Never.

9 Q So to your own knowledge you never knew where Mr.
10 Manning lived?

11 A No.

12 Q After Mrs. Manning -- is that his mother's name?

13 A Yes.

14 Q -- failed to furnish the collateral she promised
15 you spoke to Mr. Manning; is that correct?

16 A Yes.

17 Q You asked him for collateral?

18 A Yes.

19 Q Did he furnish you any additional collateral?

20 A No. What he actually did is furnish me people who
21 knew him well; that I should talk to them and they would tell
22 me that he was a reliable fellow.

23 Q When did you commence looking for Mr. Manning?

24 A On the 13th day of May.

25 Q And from the 13th day of May until September 16,

mcn

Meyer-cross

17

1969 did you have occasion to leave the State of New York to look for Mr. Manning?

A No.

Q Did you receive information that Mr. Manning had left town?

A At one time I received information that he had gone to Chicago for several days and I informed Agent Devine of this, exactly where he was supposed to be staying in Chicago. It turns out that -- I don't know -- all right.

Q Are you familiar with Mr. Manning's friend Nellie?

A No. I mean, I know of her. I have never met her until just a few moments ago.

Q You never spoke to her?

A Yes, I did speak to her.

Q You spoke to her during the course of your investigation?

A Yes.

Q How often did you speak to Mr. Devine?

A I must have spoken to Mr. Devine maybe, I would say, somewhere between six and ten times, but I called his office many more times than that and I spoke to his partner, people there. He was generally in the field, but I was in regular touch with Mr. Devine. I mean, I know he had a baby during this period of time while he was -- at one time he had a

1 mcn

Meyer-cross

18

2 vacation.

3 Q I didn't ask you that. When you spoke to Mr.
4 Manning's friend Nellie did she give you any information as
5 to his whereabouts?

6 A The only time I spoke to Nellie personally was
7 shortly after he didn't appear and at that time she said
8 something that she had just -- he had left the court and she
9 doesn't understand what happened to him and she is sure, you
10 know, he wouldn't abscond; that something must be wrong,
11 and I think I talked to her one or two times after that, all
12 within a short time after he left. Then, after that, I never
13 spoke to her because I think her phone number was changed
14 or something in that order.

15 Q Do you know where Nellie lived in May of 1969?

16 A May? You mean ---

17 Q When he became a fugitive, when Manning became a
18 fugitive.

19 A Yes, she was supposedly living at the address
20 where he was captured.

21 Q Was she living with him?

22 A Supposedly, yes.

23 Q Are you aware that Mr. Manning was apprehended in
24 the same building that he lived in on October 16 or October
25 17 of 1968?

1 mcn

Meyer-cross

19

2 A Yes, I had been up there. In other words, after
3 he had forfeited his bail I had been up to his apartment.

4 Q Was this the same apartment that Mr. Manning was
5 apprehended in on September 16 of 1969?

6 A He was not apprehended in the apartment -- downstairs
7 in front of the house, of the building, of the apartment that
8 he formerly lived. What happened was this: My information
9 was that Nellie, who had been living on 152nd Street, had
10 moved up to this apartment and he was coming and going at
11 intervals. This was also information that I turned over to
12 the marshals and to Agent Devine. In other words, she had
13 taken the apartment and they had investigated and found that
14 she had paid rent after that, but she originally lived on
15 152nd Street where he came and went, living with her
16 sporadically.

17 MR. JOHNSON: I have no further questions of the
18 witness, your Honor.

19 MR. GELLER: No further questions.

20 BY THE COURT:

21 Q Can you detail in any way what your expenses have
22 been since May until September?

23 A I never actually detailed it. What I did was this:
24 In my course of travels I gave out moneys where necessary.
25 I promised moneys where I could and --

mcn

Meyer-

20

1 Q I'm not interested in what you promised. I'm
2
3 interested in what you actually spent.

4 A I would say somewhere in the area between \$500
5 and \$1000, approximately. I actually spent that in the course
6 of my travels.

7 Q Were you aware of the fact that Manning had been
8 convicted of federal narcotic offenses before?

9 A Yes.

10 Q Were you aware of the fact that the mandatory sen-
11 tence in his case would have started at ten years?

12 A Yes, sir, I was.

13 Q And you are in court and out of court almost as
14 much as a lawyer, so that you realize with a sentence which
15 runs from ten to forty years the fellow that has been
16 convicted two or three times before of a narcotics violation
17 is going to get a pretty stiff jolt; isn't that right?

18 A Yes, your Honor, but if I may add, I think in all
19 the time I have been in business I have had one person on
20 a bigamy charge who I have lost money on not showing up on
21 a federal charge.

22 Q My recollection of what I do here, which is some-
23 thing I brought over from the state court actually, is that
24 I never forfeit the bail the first time around.

25 A That's right.

mcn

Meyer

21

1 Q The first time around I will issue a bench warrant
2 and I will order a forfeiture and I will hold up the for-
3 feiture to give the bondsman a chance to bring him in. I
4 did that in this case, didn't I?
5

6 A Yes, your Honor.

7 Q So that without looking at the record -- you are
8 shaking your head in the affirmative and are indicating that
9 is what I did. That would be my normal course. So, apparently
10 I followed that course in this case. I issued a bench
11 warrant on a certain date, maybe the 13th of May. I would
12 assume that would be the date.

13 MR. JOHNSON: That's correct, your Honor.

14 Q And I said at that time, in effect, that the for-
15 feiture is ordered but I will hold up the forfeiture to give
16 you an opportunity to bring him in and I undoubtedly would
17 have given you at least a week or two weeks to do that.
18 Apparently the time ran by and --

19 MR. JOHNSON: My record shows that on May 16th
20 the government made an application for bail forfeiture which
21 was granted and execution of the order was suspended until
22 May 29 of 1969.

23 THE COURT: That is exactly what I'm getting at.

24 Q So that I did give you that leeway in May to
25 try and get him in, but you weren't successful.

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mcn

Meyer

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A Yes.

Q And you did try to get him in during that period of time?

A Yes.

THE COURT: That is what I wanted to find out.

MR. GELLER: If I may make one observation: When your Honor formally forfeited the bail on May 20 I believe your Honor did indicate orally that when and if the defendant was brought back to court your Honor would entertain a motion--

THE COURT: My reasoning in the thing is that I give them an opportunity to bring them in, but once they have that opportunity, in the absence of showing some great reason for doing it, I ordinarily would limit him to that time because if he had come in on the 29th and said to me at that time: Look, I'm unable to get this fellow but if you give me another week I have telephone numbers and I have Nellie and I have some other people, I'm going to make an extended effort to get him in. Then I would be sympathetic to such an approach and I would undoubtedly, in my mind, grant it. Now, no such application was made that I'm aware of. In other words, the 29th was the end of the road.

Anything else from this witness?

MR. GELLER: I have no further questions.

MR. JOHNSON: No other questions.

mcn

Meyer

23

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2 THE COURT: Did you say you want to say something?

3 THE WITNESS: Just on the impression of what you
4 said. You said you gave me reason to believe that you would
5 entertain the returning of the money and I earlier did go
6 to a great deal of trouble.

7 THE COURT: It would be a naive bondsman who would
8 think that and I don't think you are that naive because you
9 fellows know that once this thing is forfeited you are in
10 real hot water and real trouble.

11 THE WITNESS: I was aware of that but there is
12 enough involved here that you would try, I thought --

13 THE COURT: I realize that.

14 Is there going to be an offer of any further
15 evidence?

16 MR. JOHNSON: No, your Honor.

17 THE COURT: Then the decision is reserved.

18 THE WITNESS: Thank you, your Honor.
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A-78

LETTER FROM A. DANIEL FUSARO, CLERK,
UNITED STATES COURT OF APPEALS

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

UNITED STATES COURTHOUSE

FOLEY SQUARE

NEW YORK 10007

A. DANIEL FUSARO
CLERK

17 690010
Title of Action: U.S.A. v. James Ernest Manning, et al..

Docket No. : 34415-6

Dear Sir:

In accordance with the provisions of Rule
12(b) of the Federal Rules of Appellate Procedure,
notice is hereby given that the record in the above
entitled action was filed in this court on January 6, 1970.

I call your attention to Rules 30, 31 and
32 of the Federal Rules of Appellate Procedure which
govern the appendix to the briefs, filing and service
of briefs and the form of briefs and the appendix to
be filed here.

Very truly yours,

A. DANIEL FUSARO
Clerk

C-1
NOTICE
of filing
of briefs
1/13/70

JUDGEMENT OF AFFIRMANCE IN COURT OF APPEALS 11/20/73

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in
and for the Second Circuit, held at the United States Court-
house in the City of New York, on the fifteenth day of July
one thousand nine hundred and seventy-one.

Present: HON. HENRY J. FRIENDLY,
 Chief Judge
 HON. J. EDWARD LUMBARD,
 HON. LEONARD P. MOORE,
 HON. J. JOSEPH SMITH,
 HON. IRVING R. KAUFMAN,
 HON. PAUL R. HAYS,
 HON. WILFRED FEINBERG,
 HON. JAMES L. OAKES

Circuit Judges

-----X
United States of America,
 Plaintiff-Appellee,

v.

James Ernest Manning and Jane Doe, a/k/a
Audrey Abbott,

 Defendants,

James Ernest Manning,

 Defendant-Appellant,

The Stuyvesant Insurance Company, and
its Agent, Jack Meyer,

 Appellants.
-----X

69 Cr. 10
CANNELLA J.

Appeal from the United States District Court for the
Southern District of New York.

JUDGMENT OF AFFIRMANCE IN COURT OF APPEALS 11/20/73

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

JUDGMENT ENTERED - 11/20-73

/s/ Raymond F. Burghardt
Clerk

A. DANIEL FUSARO
Clerk

(Seal)

FILED
U.S. DISTRICT COURT
NOV 16 9 36 AM '73
S.D.OF N.Y.

NOTICE OF MOTION FOR JUDGMENT ON FORFEITURE
OF APPEARANCE BOND 12/30/74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

-v-

JAMES ERNEST MANNING,

Defendant.

NOTICE OF MOTION FOR
FORFEITURE OF
APPEARANCE BOND

69 Cr. 10

-----X

TO THE DEFENDANT AND HIS ATTORNEY,
AND TO STUYVESANT INSURANCE COMPANY,
BAIL BOND AGENCY.

S I R S:

PLEASE TAKE NOTICE, that on January 16, 1975, at
10:00 A.M. in the courtroom of the Honorable John M. Cannella,
United States District Judge, Southern District of New York,
plaintiff, United States of America, will move the above-
entitled Court under Rule 46(f)(3) of the Federal Rules of
Criminal Procedure for judgment on Forfeiture of the Appearance
Bond filed by the Stuyvesant Insurance Company on behalf of
defendant in the above-entitled matter.

Said motion will be based on this notice, the files
and records of the Court, and the affidavit of Robert M. Jupiter
hereto attached.

NOTICE OF MOTION FOR JUDGMENT ON FORFEITURE
OF APPEARANCE BOND 12/30/74

Dated: New York, New York

December 30, 1974

Yours, etc.

PAUL J. CURRAN,
United States Attorney for the
Southern District of New York,
Attorney for United States of
America

By: /s/ Robert M. Jupiter
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square,
New York, New York 10007
Tel: (212) 791-0032

-----X
UNITED STATES OF AMERICA,

-v-

69 Cr. 10

Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT M. JUPITER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney in the Southern District of New York and am in charge of the above matter. The information contained herein was obtained for the official files of the United States Government and former members of the United States Attorney's office.

2. On October 16, 1968 James Ernest Manning was arraigned before Commissioner Earl Bishopp. He was released in \$20,000 bail which was posted by the Stuyvesant Insurance Company, 877 Brook Avenue, Bronx, New York for a hearing to be held on January 7, 1969.

3. The above one-count indictment was filed on January 3, 1969, charging the defendant with concealing a

AFFIDAVIT OF ROBERT M. JUPITER, ASSISTANT
U.S. ATTORNEY, IN SUPPORT OF MOTION

large quantity of narcotics. On January 30, 1969, the defendant pleaded not guilty and he was continued on the \$20,000.00 as previously set by the commissioner.

4. On May 12, 1969 this matter was scheduled to go to trial before Judge John M. Cannella. On the day of the trial, the defendant's attorney requested and received an adjournment until May 13, 1969. The defendant was instructed to return for trial that day. On May 13, 1969 Manning failed to appear for his trial. A bench warrant was ordered. The Government's application to forfeit bail was granted. However, execution of the order was suspended until May 29, 1969. In an order signed June 4, 1969, the aforesaid bail was forfeited.

5. After a long and extensive search, on September 16, 1969 the defendant was arrested. Bail was fixed in the amount of \$100,000 and the matter referred out to trial.

6. On October 3, 1969, the defendant filed an affidavit and notice of motion to vacate the forfeiting of bail. This motion was denied by Judge John M. Cannella by Memorandum Opinion #36,335 dated November 21, 1969.

7. A jury trial was conducted between October 10, 1969 and October 14, 1969 resulting in a guilty verdict. Judge John M. Cannella sentenced the defendant to a twelve

AFFIDAVIT OF ROBERT M. JUPITER, ASSISTANT
U.S. ATTORNEY, IN SUPPORT OF MOTION

year prison term.

8. The defendant filed notice of appeal to the United States Court of Appeals, Second Circuit on December 1, 1969 from an order denying the motion to vacate the forfeiture of bail that was entered on November 21, 1969 and from the conviction.

9. The conviction was eventually affirmed by the Second Circuit sitting en banc on July 15, 1971. The defendant's petition for certiorari filed December 20, 1971 was denied.

10. On November 16, 1973, the judgment of the United States Court of Appeals, Second Circuit was filed, affirming the judgment of the District Court for the Southern District of New York. Judgment was entered November 20, 1973.

WHEREFORE, it is respectfully requested that this Court on motion of the Government pursuant to Rule 46(e)(3), Federal Rules of Criminal Procedure, notice of which has been mailed to Arthur Hammer, Esq., attorney for surety, the Stuyvesant Insurance Company, to enter a judgment of forfeiture against the defendant and his surety on the appearance bond in this case.

VERIFIED
October 30, 1974

/s/ Robert M. Jupiter
Assistant United States Attorney

AFFIDAVIT OF ROBERT M. JUPITER, ASSISTANT
U.S. ATTORNEY, IN SUPPORT OF MOTION

cc: M. Arthur Hammer
9 East 40 St.
New York, N.Y. 10016

CROSS-MOTION FOR REMISSION OF FORFEITURE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

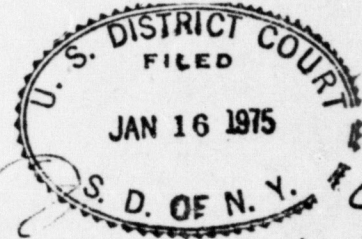
-v-

JAMES ERNEST MANNING,

Defendant.

----- X

PLEASE TAKE NOTICE, that on January 23, 1975, at 10:00 A.M., in the courthouse of the Honorable John M. Cannella, United States District Judge, Southern District of New York, the Stuyvesant Insurance Company will cross-move the above-entitled Court under Rule 46(e)(4) of the Federal Rules of Criminal Procedure for an order directing that any judgment of default made and entered herein by order of this Court upon the forfeiture of the \$20,000.00 bail bond posted herein by the Stuyvesant Insurance Co., be remitted in whole or in part pursuant to Rule 46(f)(4) of the Federal Rules of Criminal Procedure which provides that the Court may remit such judgment of default and forfeiture under the conditions applying to the setting aside of forfeiture in paragraph (2) of said subdivision (f) of Rule 46, and for such other and further relief as the Court may deem just and proper.



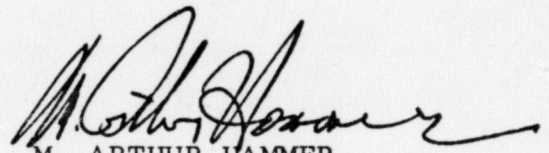
69 CR 10 (JME) H.R.F.

NOTICE OF CROSS-MOTION
FOR REMISSION OF
FORFEITED BAIL BOND

CROSS-MOTION FOR REMISSION OF FORFEITURE

Said motion will be based on this notice, the pending motion of the United States of America under present Rule 46(e) (3) for judgment on forfeiture of the Appearance Bond filed by the Stuyvesant Insurance Company, the files and records of the Court, and the affidavit of Michael Shapiro hereto attached.

Dated: New York, N. Y.
January 15, 1975



M. ARTHUR HAMMER
Attorney for
Stuyvesant Insurance Co.
9 East 40th Street
New York, New York 10016
MU 5-8778

TO: PAUL J. CURRAN, Esq.
United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

AFFIDAVIT OF MICHAEL SHAPIRO, FOR BONDING
COMPANY, IN OPPOSITION TO MOTION AND IN SUPPORT
OF CROSS-MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA,

-v-

AFFIDAVIT

JAMES ERNEST MANNING,

Defendant.

- - - - - X

STATE AND COUNTY OF NEW YORK) SS :

MICHAEL SHAPIRO being duly sworn, deposes and says:

1. I am the State Agent in New York State of the Stuyvesant Insurance Company, and make this affidavit in opposition to the motion for judgment on forfeiture of the appearance bond herein, and in support of the cross-motion for remission in whole or in part of this forfeiture.

2. The defendant, Manning, failed to appear for his trial on May 13, 1969. No jury had been examined or impaneled.

3. I was informed that due solely to the efforts and expense incurred by Jack Meyer, the executing agent of the bail bond herein, and as a direct result of the information he gathered, he was able to inform Federal Agent Devine and Federal Deputy Marshal Tom Monahan of the Warrant Squad of defendant, Manning's exact location on September 16, 1969. On that date the defendant was taken

AFFIDAVIT OF MICHAEL SHAPIRO, FOR BONDING
COMPANY, IN OPPOSITION TO MOTION AND IN SUPPORT
OF CROSS-MOTION

into custody by the government agents at that location and was lodged in the Federal House of Detention on West Street. Sworn testimony to these facts was taken in the District Court and is part of the record of this case.

4. Within a month the defendant was tried before Judge Cannella and a jury. The trial commenced October 9th, 1969, and on October 14th, 1969, he was found guilty. On November 18, 1969, he was sentenced to imprisonment for a term of 12 years.

5. Upon information and belief, no government witnesses scheduled to testify at the original trial date were unavailable for the later trial date. The government lost no rights and was in no way prejudiced by the delay in the trial. The indictment was duly tried and determined.

6. The executing agent, Jack Meyer, reported to deponent, as State Agent of the company, that a motion had been made for an order setting aside the forfeiture of the \$20,000.00 bail bond herein, pursuant to then Rule 46(f)(2) [now Rule 46(e)(2)] of the Federal Rules of Criminal Procedure. Agent, Meyer, stated said motion was made by the law firm of Rubin & Gold, Esqs., of 299 Broadway, New York, N. Y., who were the attorneys for defendant Manning, from his arraignment through the trial. Meyer was authorized to employ said attorneys for the purpose of making and prosecuting said motion.

AFFIDAVIT OF MICHAEL SHAPIRO, FOR BONDING
COMPANY, IN OPPOSITION TO MOTION AND IN SUPPORT
OF CROSS-MOTION

7. Thereafter deponent was informed by Meyer that the motion to set aside the forfeiture of the bail bond herein had been denied by Judge Cannella. The decision was dated November 20, 1969, and an order denying the motion was entered November 21, 1969.

8. Deponent was further informed by Meyer that the same attorneys, Messrs. Rubin and Gold had been retained to take an appeal from the order denying the motion to set aside the forfeiture, and had served and filed a Notice of Appeal from such order. A Notice of Appeal from such order, in behalf of the defendant, Manning, and of Stuyvesant Insurance Co. was in fact filed on December 1, 1969, by Messrs. Rubin and Gold, as attorneys for the defendant and the Stuyvesant Insurance Co.

9. Thereafter, deponent was informed by Meyer that the judgment of conviction of defendant, Manning, had been reversed by the Court of Appeals of this Circuit, and that the forfeiture of the bail bond herein had also been vacated on appeal. Deponent was informed that the same attorneys, Rubin and Gold, who had been retained to prosecute the appeal from the order denying the motion to set aside the forfeiture, were also the attorneys for defendant, Manning, on his appeal from his conviction in the District Court.

AFFIDAVIT OF MICHAEL SHAPIRO, FOR BONDING
COMPANY, IN OPPOSITION TO MOTION AND IN SUPPORT
OF CROSS-MOTION

10. Deponent and his company thereafter believed that the company's liability under this bond had been discharged, until in or about November, 1973, deponent received notice from the United States Attorney's office demanding payment of this \$20,000.00 forfeiture.

11. This request caused deponent to make investigation into the record herein.

12. Deponent's search of the court file of this case by his attorneys herein disclosed that although in fact a notice of appeal from the order dated November 21, 1969, denying the motion to vacate the forfeiture had been duly filed with the Court, and although the appeal from defendant Manning's conviction had been prosecuted to a conclusion (including a petition to the Supreme Court of the United States for a Writ of Certiorari), the record is barren of any action with respect to the appeal from the order denying the motion to vacate the forfeiture herein, other than the following.

13. The General Docket of the Court of Appeals for the Second Circuit shows Case No 34,415, with the following title:

AFFIDAVIT OF MICHAEL SHAPIRO, FOR BONDING
COMPANY, IN OPPOSITION TO MOTION AND IN SUPPORT
OF CROSS-MOTION

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES ERNEST MANNING and JANE DOE, a/k/a
AUDREY ABBOTT,

Defendants.

JAMES ERNEST MANNING,

Defendant-Appellant,

THE STUYVESANT INSURANCE COMPANY, and its
Agent, JACK MEYER,

Appellants.

CR.

(& in 34416)

TRANSFERRED FROM
MR 3494

The only docket entry that relates to the appeal from the order denying the motion to set aside the forfeiture reads:

12-8-69 Filed statement of docket entries
and copy of notice of appeal
(Stuyvesant Ins. Co. and its Agent,
Jack Meyer & Manning) (& in 34416)

The docket also shows that Gerald Walpin, Esq., was appointed by the Court to represent Defendant, Manning, by order (CJA-11) entered February 17, 1970. The names of Messrs. Rubin & Gold, as attorneys for defendant, Manning, was stricken from the docket.

AFFIDAVIT OF MICHAEL SHAPIRO, FOR BONDING
COMPANY, IN OPPOSITION TO MOTION AND IN SUPPORT
OF CROSS-MOTION

14. The record shows further that after the Court of Appeals decision, dated March 26, 1971 had reversed defendant, Manning's conviction on the ground that there was no probable cause for an entry for the purpose of arrest and the consequent seizure of evidence, the Government petitioned for a rehearing and, failing that, requested consideration in banc of the panel's decision. The panel denied rehearing, but a majority of the active judges voted for in banc consideration. The Court of Appeals in banc affirmed the conviction (with Circuit Judges Lumbard and Smith dissenting) on July 15, 1971.

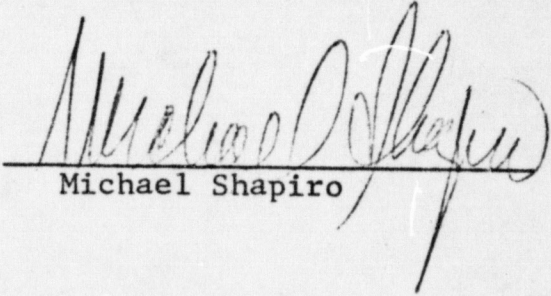
15. The record also shows unsuccessful applications in defendant Manning's behalf for rehearing and to the Supreme Court for a writ of certiorari, the latter having been denied by order dated December 16, 1971, with Mr. Justice Douglas and Mr. Justice Marshall noted as of the opinion that certiorari should be granted. The defendant was remanded and is serving his sentence as far as deponent knows.

16. Faced with the fact that the appeal on behalf of the Stuyvesant Insurance Company from the order of June 4, 1969, denying the motion to set aside the bail bond forfeiture was not prosecuted, deponent's attorney, M. Arthur Hammer, wrote to the United States Attorney on September 13, 1974, a letter a copy of which is attached.

AFFIDAVIT OF MICHAEL SHAPIRO, FOR BONDING
COMPANY, IN OPPOSITION TO MOTION AND IN SUPPORT
OF CROSS-MOTION

17. Where as in this case, the defaulting defendant was apprehended within a reasonable period of time due to the efforts and expense of the surety, and where the government has lost no rights and was in no way prejudiced by the delay of the trial, and the indictment has been prosecuted to its conclusion, it is respectfully submitted, judgment against the surety for the full amount of \$20,000.00 would unjustly penalize the surety. Further, as a matter of public policy, the incentive for a surety to seek and apprehend an absconder should not be destroyed; it should be encouraged.

WHEREFORE, it is respectfully urged that the motion of the government for judgment in that sum be denied, and the cross-motion of the surety for remission of the forfeiture be granted.


Michael Shapiro

Sworn to before me this

15 day of January, 1975.

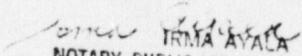

IRMA AYALA
NOTARY PUBLIC, STATE OF NEW YORK
No. 03-4525145
Qualified in Bronx County
Commission Expires March 30, 1975

EXHIBIT TO SHAPIRO AFFIDAVIT -
LETTER FROM M. ARTHUR HAMMER, ESQ. TO
ROBERT M. JUPITER, ESQ. ASSISTANT U.S. ATTORNEY,
DATED SEPT. 13, 1974

September 13, 1974

Robert M. Jupiter, Esq.
Ass't U.S. Attorney
Chief, Claims Unit
United States Attorney
Foley Square
New York, New York 10007

Re: RMJ : VJS:rcs/52435
Bail Bond Forfeiture
James Ernest Manning
69 Cr. 10

Dear Sir:

This refers to your letter dated September 6, 1974 addressed to the Stuyvesant Insurance Company, which it has requested that I answer in its behalf.

Last year, when similar requests were made of the Stuyvesant Insurance Co., it retained me to make an appropriate application to the Federal Court for remission of the subject forfeiture, based upon the facts preceding and subsequent to the forfeiture which it felt warranted remission, under the principles of the applicable law, rules, and cases.

It appeared however, that under Rule 46 (f) (4) (Federal Rules of Criminal Procedure), an application to the Court for remission could be made only after a judgment of default had been duly made by the Court, on notice to the obligors on the forfeited bond, and that no such judgment of default had been made and entered in this case.

I had a careful search of the Court's records made, including the Docket Entries and the files in the Clerk's office and in the Federal Records Center at 641 Washington Street, but no record of such a judgment of default could be found, and my

EXHIBIT TO SHAPIRO AFFIDAVIT -
LETTER FROM M. ARTHUR HAMMER, ESQ. TO
ROBERT M. JUPITER, ESQ. ASSISTANT U.S. ATTORNEY,
DATED SEPT. 13, 1974

Robert M. Jupiter, Esq.

-2-

September 13, 1974

client informed me that it had received no notice of an application for such a judgment of default, or any copy of such a judgment.

An associate of mine, Arthur Levine, Esq., went to the U.S. Attorney's office last September and discussed with personnel in your Claims Unit the position in which I found myself - where a motion, if then made in my client's behalf for remission, would be premature.

The Court's records show that a prior motion was made in the obligor's behalf, immediately after the forfeiture was declared, to set aside the forfeiture. However, that motion was specifically made under Rule 46 (f) (2) - which permits such a motion to be made before a judgment of default has been made and entered. Further, the attorneys then appearing for the obligor were the same attorneys who had represented the defendant, Manning, in the trial of the criminal case, and in his appeal after his conviction.

The obligor, Stuyvesant Insurance Company, had been informed by said attorneys that on the reversal of Manning's conviction by the Court of Appeals of this Circuit, the forfeiture of the bail bond had also been vacated. Consequently, the obligor believed its liability under the bond had been discharged. It was not until the receipt by it last year of a letter from the U.S. Attorney's office requesting payment of the \$20,000. bail bond forfeiture, that the obligor had reason to believe the contrary.

At the time of my associate's conversations with your office last year, I had prepared motion papers for an application to the Federal Court for remission of the forfeiture under Rule 46 (f) (4) so that the motion could be made without delay, as soon as it was permissible under the Rules of Criminal Procedure.

If your office now finds it in order to move for a Judgment of default under Rule 46 (f) (3), so that you will be in a position to issue execution thereon, it is my intention to make a motion for remission under Rule 46 (f) (4) as a cross-motion to your motion. In that way, the facts and issues my client wishes

EXHIBIT TO SHAPIRO AFFIDAVIT -
LETTER FROM M. ARTHUR HAMMER, ESQ. TO
ROBERT M. JUPITER, ESQ. ASSISTANT U.S. ATTORNEY,
DATED SEPT. 13, 1974

Robert M. Jupiter, Esq.

-3-

September 13, 1974

to present to the Federal Court, will be before the Court at the same time as the facts and issues presented by your motion for judgment of default, and the time and energies of the Court and of our respective offices will be conserved.

I await your response.

Yours truly,

M. Arthur Hammer

MAH:bb

cc: Stuyvesant Insurance Co.

STIPULATION OF ADJOURNMENT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

Plaintiff

-v-

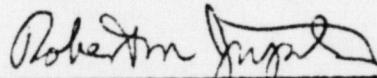
JAMES ERNEST MANNING

Defendant

----- X

It is hereby stipulated and agreed between the United States Attorney for the Southern District of New York and the attorney for the Stuyvesant Insurance Company, that the motion for judgment on forfeiture which is now returnable on January 16, 1975, be and it is adjourned to January 23, 1975, at the same time and place.

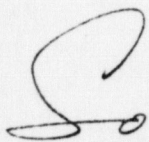
Dated: New York, N. Y., January 13, 1975.

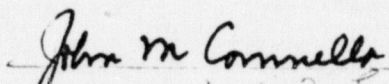


for the United States Attorney
for the Southern District of
New York



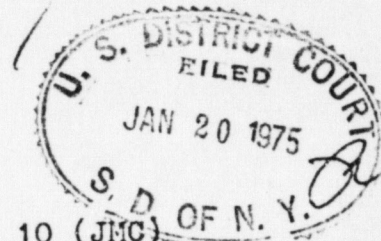
Attorney for Stuyvesant Insurance
Company

 ORDERED: JANUARY 15, 1975


J.S.D.S.

MICROFILM

JAN 20 1975



69 Cr. 10 (JMC)

STIPULATION ADJOURNING MOTION

-----X

-v-

69 Cr. 10

-----X

ROBERT M. JUPITER deposes and says:

2. On October 3, 1969, the Stuyvesant Insurance Company filed an affidavit and notice of motion to vacate the forfeiting of bail. Their affidavit set forth essentially the same facts as are now set forth in the affidavit of Mr. Michael Shapiro.

REPLY AFFIDAVIT OF ROBERT M. JUPITER, FOR U.S.,
IN OPPOSITION TO CROSS-MOTION

3. The Government filed a reply affidavit in which it asserted it was necessary to undertake a long and extensive search to find the fugitive. The defendant was not found and arrested until September 16, 1969, more than four months after bail was forfeited.

4. The motion to set aside the bail forfeiture was denied by Judge John M. Cannella in a four-page Memorandum Opinion #36,335 filed November 21, 1969.

5. Since the parties to the motion made by the Stuyvesant Insurance Company on October 3, 1969 to vacate the bail forfeiture are the same as the parties to the present cross-motion and for which they are seeking similar relief that was denied by the Court on November 21, 1969 and that the merits of their claim for relief were examined into on the previous occasion, Stuyvesant Insurance Company is estopped from again litigating this same issue. Zdanok v. Glidden Co., Durkee Famous Foods Div. (CA2 NY) 327 F2d 944, cert. den. 377 US 934, 12 L Ed 2d 298, 84 S Ct. 1338; 46 Am Jur. 2d §457.

WHEREFORE, it is respectfully requested that the cross-motion of the Stuyvesant Insurance Company for remittance of the bail forfeiture with respect to James Ernest Manning be

REPLY AFFIDAVIT OF ROBERT M. JUPITER, FOR U.S.,
IN OPPOSITION TO CROSS-MOTION

denied and that this Court pursuant to Rule 46(e)(3), Federal Rules of Criminal Procedure, enter a judgment of forfeiture against the Stuyvesant Insurance Company, the surety on the appearance bond in this case.

/s/ Robert M. Jupiter
Assistant United States
Attorney

VERIFIED
January 20, 1975

cc: Mr. Arthur Hammer
Att'y. for Stuyvesant Ins. Co.
9 East 40 Street
New York, New York 10016

MEMO IN SUPPORT OF CROSS-MOTION

JUDGE CAMPBELL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

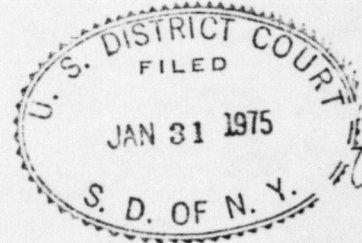
Plaintiff,

-v-

JAMES ERNEST MANNING,

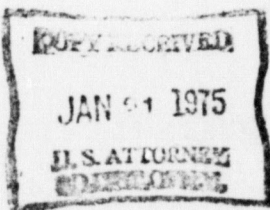
Defendant.

----- X



69 Cr. 10 (AMC)

MEMORANDUM IN SUPPORT OF CROSS-MOTION
FOR REMISSION OF BAIL FORFEITURE



PAUL J. CURRAN

M. ARTHUR HAMMER
Attorney for Stuyvesant
Insurance Company
9 East 40th Street
New York, New York 10016

TO: PAUL J. CURRAN, Esq.
United States Attorney
United States Courthouse
Foley Square
New York, New York

MEMO IN SUPPORT OF CROSS-MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

JAMES ERNEST MANNING, :

Defendant. :

- - - - - X

MEMORANDUM IN SUPPORT OF CROSS-MOTION
FOR REMISSION OF BAIL FORFEITURE

POINT ONE

The surety, Stuyvesant, is not estopped from bringing its present cross-motion for remission, which is authorized and contemplated by Rule 46(e)(4), Federal Rules of Criminal Procedure.

In the Government's "Reply Affidavit in Opposition to Cross Motion," dated January 20, 1975, reference is made to a previous motion made in behalf of Stuyvesant to vacate the bail forfeiture herein. It is asserted that because the Court denied that motion, and the parties to this motion are the same, Stuyvesant is "estopped from again litigating this same issue." And Zdanok v. Glidden Co., Durkee Famous Foods Div.

MEMO IN SUPPORT OF CROSS-MOTION

(CA 2, NY) 327 F2d 944, cert, den, 377 US 934, 12 L Ed 2d 298, 84 S Ct 1338, is cited to support such assertion.

But Zdanok does not support such contention. The rule enunciated there was based on a particular situation which is summarized on that case's Headnote 1, thusly:

"District Court on retrail was without power to receive defendant's evidence on the merits since at former trial parties had agreed that at the close of presentation of evidence on liability, both would move for judgment on that issue and be concluded by the decision. . ." (327 F2d, at 944)

In the instant case, there was no prior agreement or statement by Stuyvesant that it would be "concluded" by the decision on its prior motion under Subdivision 2 of Rule 46 and that it would not thereafter avail itself of its statutory right to move for remission under Subdivision 4.

The previous motion for relief was made under paragraph (2) of then subdivision (f) (now subd. e) Rule 46, Fed. Rules Crim, Proc., which provides that

"(2) Setting Aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture."

MEMO IN SUPPORT OF CROSS-MOTION

The Government's present motion is made under paragraph (3) of said subdivision (e) deals with "Enforcement" of the liability of the obligors of a bond "When a forfeiture has not been set aside . . ."

However, paragraph (4) of said subdivision (e) of Rule 46 provides:

"(4) Remission. After entry of such judgment (of default), the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision."

It is pursuant to such paragraph (4) that Stuyvesant's motion for remission of the forfeiture is made.

It is pertinent to note that even if the issues on the two motions are deemed to be substantially the same, the doctrine of "the law of the case" does not preclude this court from considering the motion for remission de novo. The opinion in Zdanok quotes with approval (327 F2d, at p. 952) the relevant language of Judge Learned Hand:

". . . the 'law of the case' does not rigidly bind a court to its former decisions, but is only addressed to its good sense." Higgins v. California Prune & Apricot Growers, Inc., 3 F2d 896, 898 (2 Cir. 1924)"

Stuyvesant's present motion for remission is being

MEMO IN SUPPORT OF CROSS-MOTION

considered by the same judge who decided Stuyvesant's earlier motion to vacate the bail forfeiture. It would seem that relevant to the question being considered is Circuit Judge Hand's language in Dictograph Products Co. v. Sonotone Corp., 230 F.2d 131, CA 2d, 1956): "No one will suggest that the first judge himself may not change his mind and overrule his own order" (At page 134).

POINT TWO

The facts in this case bring it outside the principles of the specific cases which have held that bail forfeitures should not be set aside or remitted.

In the court's opinion denying Stuyvesant's prior motion to set aside the forfeiture, it cited two cases in its decision.

United States v. Egan, 304 F2d 262, 266-67 (2d Cir. 1968) was quoted in support of this language: "In exercising its broad discretion under this Rule [Federal Rule of Criminal Procedure, No. 46] the court does not find herein 'that justice does not require the enforcement of the forfeiture.'"

But Egan is clearly distinguishable from the present case. The following language of Circuit Judge Anderson, in Egan, makes that quite clear:

MEMO IN SUPPORT OF CROSS-MOTION

"Under the circumstances of this case we conclude that there was no abuse of discretion. Stuyvesant presented no basis whatever for the trial court to hold 'that justice does not require the enforcement of the forfeiture.' It has never produced the defendants nor has it said what effort it is making, if any, to find and produce them."

In the present case, the surety has supplied the two factors, or prerequisites, that Egan specifies as the basis for the District Court to find that justice does require the enforcement of the forfeiture -- the surety here has produced the defendant, and it has described how that result was achieved, solely through its own considerable efforts and at its own substantial expense (as the record shows).

The court's prior opinion also stated that its decision was "In view of the facts of this case and the principles regarding the setting aside of a forfeiture enunciated in this court's opinion in United States v. Fook Dan Chin, 304 F.S. 403." Among the "basic factors" the court must consider, as stated in Fook Dan Chin is the purpose "to insure the appearance of the accused to answer the indictment and to submit to a trial and the judgment of the court thereon."

In the present case that purpose was accomplished, and there is no question that it was the hope of the surety that

MEMO IN SUPPORT OF CROSS-MOTION

by expending substantial efforts and sums to locate and produce the fugitive defendant it would merit from the court consideration in the setting aside or remission of the forfeited bail. That was the driving force that impelled the surety and its representative.

Also, in Fook Dan Chin, the court stated that where a defendant fails to appear without a justifiable excuse, "and the government is in any manner prejudiced thereby, the forfeiture...should be enforced unless it appears that justice does not so require." (Emphasis supplied)

As stated in the moving papers on the present motion for remission, and as shown by the hearing held on the former motion, the government was not prejudiced in its trial of this defendant. No witnesses or evidence was unavailable at the delayed trial. The defendant was convicted at that trial, and was sentenced to a substantial term, which he is presumably still serving.

Another factor that concerns the court in exercising its discretion is thus stated in Fook Dan Chin: "and this court has refused to set aside a forfeiture where the government incurs substantial expenses." In that connection, the court is referred to POINT THREE of this memorandum of law where it

MEMO IN SUPPORT OF CROSS-MOTION

is shown that the only support for a finding that the government incurred "substantial expenses" because of the defendant's failure to appear is the unsupported conclusory statement to that effect in a prior affidavit submitted by the Government.

POINT THREE

In this case, justice does not require the enforcement of the bail forfeiture, and justifies the court in remitting it in whole or in substantial part.

Stuyvesant's motion for remission is based upon the record of this case and prior motions therein as contained in the files of the court. Its moving affidavit summarizes the bases for holding that justice does not require the complete forfeiture of the bail:

1. The defaulting defendant was apprehended within a reasonable period of time due solely to the efforts of and expenses incurred by the surety.
2. The Government has lost no rights and was in no way prejudiced by the delay of the trial, and the indictment has been prosecuted to its conclusion. No Government witnesses scheduled to testify at the original trial date were unavailable for the later trial date.

MEMO IN SUPPORT OF CROSS-MOTION

The file of this case includes the minutes of a hearing held November 18, 1969, before Judge Cannella, in connection with the prior motion to set aside the forfeiture. The testimony shows the diligent and continuing efforts to locate the defendant, MANNING, so he could be apprehended after his failure to appear for trial on May 13, 1969, that were made by Jack Mayer, the executing bail bond agent for Stuyvesant Insurance Company. Such efforts include the following:

During the period from May 13, 1969 until September 16, 1969, when defendant, MANNING, was apprehended, solely due to the efforts of the information supplied by Jack Mayer, he got in touch with and spoke to very many people, including informants, police officers and federal officers seeking information concerning Manning's whereabouts and possible activities. Mayer went to many of the places where Manning had been known to be in the past, in hope that he might come across him or secure some news about him or leads that would enable Manning to be located.

Mayer had been in touch with Federal Agent Devine and Deputy Federal Marshal Tom Monahan, of the Warrant Squad, "a minimum of 2 to 3 times a week from the time he (Manning) left until the time that he was captured". Mayer said that

MEMO IN SUPPORT OF CROSS-MOTION

during this 4 month period he was "getting information" as to Manning's whereabouts, but was not able to get it in sufficient time to enable it to be useful in having Manning apprehended.

On the morning of September 16, 1969, Mayer received a phone call from an informant whose services he had enlisted that Manning was at 30 East 180th Street, Bronx, New York that morning, and was expected to be at that address all day. Mayer immediately notified Federal Dupty Marshal Tom Monahan of the Warrant Squad and, directly and solely as the result of that information supplied by Mayer, defendant Manning was taken into custody at that address by federal marshals, including Marshal Monahan.

During the intervening period Mayer spoke to Federal Agent Devine personally a number of times (as he said, between 6 and 10 times) but he telephoned his office many more times then that and spoke to Federal Agent Devine's partner and other people there as Devine was generally "in the field". Among the places that Mayer visited in the hope of locating Manning was the building at 30 East 180th Street, Bronx, New York. Manning had lived in that building previously and it turned out that it was the same building in which Manning was apprehended by

MEMO IN SUPPORT OF CROSS-MOTION

the federal agents on September 16, 1969.

In the course of his travels and efforts to locate Manning, Mayer, as he put it, "gave out monies where necessary" and estimated that he had spent "somewhere in the area between \$500.00 to \$1000.00" in the course of such efforts. Of course, that sum does not include an allowance and/or the value of the extensive time and efforts that Mayer had devoted and expended in order to locate Manning so that he could be apprehended.

There was no testimony at the November 18, 1969 hearing, described above, or at any other hearing or otherwise, as to any search that the Government made for the missing defendant. In the Government's "Reply Affidavit in Opposition" to the present motion for remission, it is stated that in response to Stuyvesant's 1969 motion to vacate the forfeiture:

"The Government filed a reply affidavit in which it asserted it was necessary to undertake a long and extensive search to fine the fugitive." (Paragraph 3).

The only language in that prior affidavit (of Assistant U.S. Attorney Sterling Johnson, Jr., dated October 14, 1969), that refers to a search is this unsupported conclusory statement:

MEMO IN SUPPORT OF CROSS-MOTION

"The time and trouble to which the Government was put in locating the defendant and the absence of a satisfactory explanation for the extensive default requires that the motion to vacate the aforesaid forfeiture be denied."

CONCLUSION

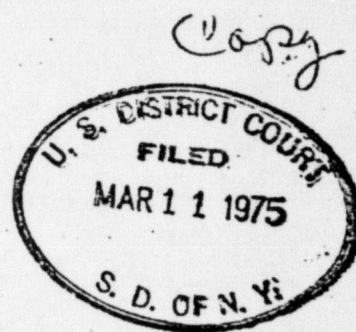
The cross-motion for remission in whole or in substantial part should be granted.

Respectfully submitted,

M. ARTHUR HAMMER
Attorney for Stuyvesant
Insurance Company
9 East 40th Street
New York, New York 10016

ARTHUR LEVINE
of Counsel

MEMORANDUM AND ORDER #42025 3/11/75, CANNELLA, D.J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES of AMERICA

-against-

JAMES ERNEST MANNING,

Defendant.

MEMORANDUM
AND ORDER

69 Cr. 10

-----X

CANNELLA, D.J.:

#42025

On the instant motion the Government has moved pursuant to Fed.R.Crim.P. 46(e)(3) for the entry of "a judgment of default" against the Stuyvesant Insurance Company, surety upon the bond of the defendant herein, James E. Manning. In view of the fact that by an order dated June 4, 1969 this Court has directed the forfeiture of such bail and that by an opinion and order dated November 20, 1969 this Court has declined to set aside said forfeiture pursuant to Rule 46(e)(2) (then Rule 46(f)(2)), the instant motion of the Government pursuant to Rule 46(e)(3) is hereby granted.

By a cross-motion, the surety has moved for remission of all or part of the \$20,000 bail so forfeited pursuant to Rule 46(e)(4). While such remission is said to be available to the surety only after the entry of

MEMORANDUM AND ORDER #42025 3/11/75, CANNELLA, D.J.

judgment, Fed.R.Crim.P. 46(e)(4); United States v. Miller, 323 F.2d 403 (6 Cir. 1963); United States v. Caro, 56 F.R.D. 16, 18 (S.D. Fla. 1972), in view of the fact that such judgment will forthwith enter, judicial economy is served by our present consideration of the matter.

Remission under Rule 46(e)(4) is to be granted "under the conditions applying to the setting aside of forfeiture" specified in Rule 46(e)(2). That subdivision, in turn, allows the court to grant remission "if it appears that justice does not require the enforcement of the forfeiture." Although numerous factors have been recognized by the courts as bearing upon a determination of whether or not justice requires the enforcement of a bail forfeiture (these considerations are not fully restated here as they are well expounded upon in the cases cited immediately infra), in the end such decision is well placed within the exercise of the Court's broad discretion. See, e.g., Williams v. United States, 444 F.2d 742, 744 (10 Cir. 1971); United States v. Kirkman, 426 F.2d 747, 751-52 (4 Cir. 1970); United States v. Egan, 394 F.2d 262, 266-68 (2 Cir. 1968); United States v. Agueci, 379 F.2d 277 (2 Cir. 1967); Smith v. United States, 357 F.2d 486, 489-90 (5 Cir.

MEMORANDUM AND ORDER #42025 3/11/75, CANNELLA, D.J.

1966); United States v. Leyva, 59 F.R.D. 303, 305 (W.D. Tex. 1973); United States v. Caro, supra; United States v. Fook Dan Chin, 304 F.Supp. 403 (S.D.N.Y. 1969). And see generally, 3 C. Wright, Federal Practice and Procedure § 777 (1969 and Supp. 1974); 6 L. Orfield, Criminal Procedure Under the Federal Rules §§ 46:129 and 46:131 (1967 and Supp. 1974). As we have earlier stated in United States v. Fook Dan Chin, 304 F.Supp. at 405-406:

In determining whether a remission is called for, the court must consider the amount of delay caused by the defendant's default, the expenses incurred by the government in attempting to locate and secure the presence of the defendant, the stage of the proceedings at the time of disappearance, and the relative efforts of the government and surety in attempting to locate the fugitive.

It is with these factors (as well as those suggested in the other authorities) in mind that the Court has reviewed the facts and circumstances of the instant case as they pertain to the question of remission of the bail forfeiture (as such have been presented in the affidavits filed with regard to the pending motions, as well as contained in the files and records of the court). Upon our inquiry, we find that remission pursuant to Fed.R.Crim.P. 46(e)(4) is warranted to the extent of

MEMORANDUM AND ORDER #42025 3/11/75, CANNELLA, D.J.

\$2,000. Such amount fairly represents the reasonable expenses incurred by the surety in connection with this matter. As this Court has stated, "[w]hile the court realizes that it is not required to order remission even where the surety's efforts resulted in the capture of the fugitive, justice seems to require partial remission in this case to the extent of expenses actually incurred by the surety following forfeiture." Id. at 406 (foot-note omitted). (As to the surety's efforts toward Manning's recapture, see, our opinion and order of November 20, 1969 at p. 3.)

Accordingly, submit an order and decree of judgment in conformity herewith and providing for the remission of \$2,000 of the \$20,000 bail forfeited.

John M. Cannella
JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
March 11, 1975.

A TRUE COPY
RAYMOND F. BURCHART, Clerk

By Raymond F. Burchart
Deputy Clerk
By M. J. Hines
Deputy Clerk

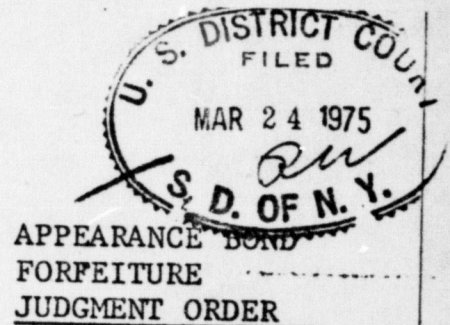
JUDGMENT FOR \$18,000 3/24/75KML:nbc
52435UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
UNITED STATES OF AMERICA,

Plaintiff,

-v-

JAMES ERNEST MANNING,

Defendant.



69 Cr. 10 (JMC)

#75,251

This cause coming on to be heard on the motion of Paul J. Curran, United States Attorney for the Southern District of New York, by Robert M. Jupiter, Assistant United States Attorney, and the cross-motion of M. Arthur Hammer, attorney for the Surety, Stuyvesant Insurance Company,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the United States of America have and recover judgment against the surety, Stuyvesant Insurance Company, in the sum of \$18,000.00 in full satisfaction of judgment pursuant to Rule 46 of the Federal Rules of Criminal Procedure.

Dated: New York, New York

March 21, 1975.

John M. Connella
U. S. D. C.

M.A.

JUDGMENT ENTERED - 3-24-75

Raymond F. Burghardt
CLERK

MICROFILM

MAR 24 1975

NOTICE OF APPEAL BY SURETY 3/28/75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Lee Pa' Jor

UNITED STATES OF AMERICA

NOTICE OF APPEAL

Plaintiff

69 Cr. 10 (JMC)

v

JAMES ERNEST MANNING

Defendant

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MAR 28 10 54 AM '75
S.D. OF N.Y.

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Please take notice that the Stuyvesant Insurance Company,

the surety on the bail bond for the defendant, hereby appeals to the United States Court of Appeals for the Second Circuit, from the order and decree of judgment, including the denial of the cross-motion of The Stuyvesant Insurance Company for remission, except as to so much of the order and decree of judgment which remitted \$2,000.00 of the \$20,000.00 bail forfeiture of the defendant; said order and decree of judgment hereby appealed from being dated March 21, 1975, and entered March 24, 1975, in conformity with Memorandum and Order # 42025 of United States District Judge John M. Cannella, dated March 11, 1975.

Dated: March 27, 1975.

[Signature]
M. ARTHUR HAYMER
Attorney for The Stuyvesant Insurance Company
9 East 40th Street
New York, N. Y. 10016
Telephone - MU 5-8778

To: Paul J. Curran, Esq.
United States Attorney for the Southern District of New York
United States Courthouse
Foley Square
New York, N. Y. 10007

BOND OF FIDELITY AND DEPOSIT CO. 4/9/75J2422c(NY)—1M, 12-74 197089
Formerly NY2422b

BOND No. 59 52 934

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND BALTIMORE, MD. 21203

DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
JAMES ERNEST MANNING,
Defendant,
STUYVESANT INSURANCE COMPANY,
Surety-Appellant.

SUPERSEDEAS

Index No. 69 CR. 10

CANNELLA, J.

WHEREAS Stuyvesant Insurance Company, Surety-Appellant

Appellant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Second Circuit, from the order and decree of judgment entered the 24th day of March, 1975, in the office of the Clerk of the above-named Court, against the said Appellant, and in favor of United States of America Appellee in the amount of EIGHTEEN THOUSAND AND NO/100 \$18,000.00.

NOW, THEREFORE the Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, duly authorized to transact business pursuant to the Act of Congress approved August 13, 1894, of New York, at 110 William Street, New York, N.Y. 10038 does hereby undertake in the sum of TWENTY THOUSAND TWO HUNDRED THIRTY AND NO/100 (\$20,230.00) that if the above-named Appellant shall satisfy the judgment herein in full together with cost, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and shall satisfy in full such modification of the judgment and such costs, interest, and damages as the Appellate Court may adjudge and award, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

DATED, New York, April 9, 1975, ~~xx~~

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By

Attorney-in-Fact

C. C. Lewis

At a regular meeting of the Executive Committee of the Board of Directors of the Fidelity and Deposit Company of Maryland, held in its office in the City of Baltimore, State of Maryland, on the 20th day of July, 1972, the following Resolution was unanimously adopted:

"RESOLVED, That W. E. Henderson, Jr., Roger S. Kobee, James M. Grant, M. V. McGrath, John L. Brissel, C. C. Lewis, Joseph E. Dacunto, P. L. Fallot, Robert T. Mobyed, Jonathan A. Vlachos, L. V. Pisacreta and Dorothy M. Troy, of the City of New York, State of New York, be, and each of them is hereby appointed Attorney-in Fact of this Company in the State of New York, and authorized, and empowered, acting alone, to execute and deliver and attach the seal of the Company to any and all bonds or undertakings for or on behalf of this Company and any and all reinsurance agreements covering bonds or undertakings, also to perform any and all acts for or on behalf of this Company in its business of guaranteeing the fidelity of persons holding places of public or private trust and the performance of contracts other than insurance policies, and executing and guaranteeing bonds, consents to orders and waivers of citation in proceedings in which this Company is a party, or other undertakings required or permitted in all actions or proceedings or by law required, and to attach thereto the seal of the Company.

"And Be It Further Resolved, That the above named Attorneys-in-Fact, and each of them is, further authorized and empowered to certify under the seal of this Company, to this Resolution within the limits hereinbefore specifically prescribed for each.

"This Resolution revokes that of April 20, 1972, in behalf of W. E. Henderson, Jr., James M. Grant, M. V. McGrath, John L. Brissel, C. C. Lewis, Joseph E. Dacunto, P. L. Fallot, Robert T. Mobyed, L. V. Pisacreta and Dorothy M. Troy and that of October 20, 1971, in behalf of L. A. Vlachos."

BOND OF FIDELITY AND DEPOSIT CO. 4/9/75

STATE OF NEW YORK
COUNTY OF New York } ss:

I, C. C. Lewis, Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, have compared the foregoing Resolution with the original thereof as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original Resolution, and that the said Resolution is still in full force and effect.

Given under my hand and the seal of the Company, at the City

of New York, this 9th

day of April 1975

C. C. Lewis

Attorney-in-Fact

STATE OF NEW YORK
COUNTY OF New York } ss:

On the 9th day of April 1975, before me personally came

C. C. Lewis, to me known, who being by me duly sworn, did depose and say, that he resides at 58 Bismark Avenue, Valley Stream

State of New York, that he is Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Fidelity and Deposit Company of Maryland is duly authorized to transact business in the State of New York in pursuance of the statutes in such case made and provided; that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 28 of the Consolidated Laws of the State of New York, known as the Insurance Law, issued to the Fidelity and Deposit Company of Maryland a Certificate of Solvency and of qualification to become surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that such certificate has not been revoked.

Dorothy M. Troy Notary Public
NOTARY PUBLIC, State of New York
No. 24-4035806
Qualified in Kings County
Certificate filed in New York County
Term Expires March 30, 1977

DISTRICT COURT OF THE UNITED STATES
OF AMERICA
FOR THE DISTRICT OF NEW YORK

SURETY:

Fidelity and Deposit Company

OF MARYLAND

New York Branch—110 William Street—Phone 235-4100

I approve of the within Bond and of the sufficiency of the surety therein.

Dated April 9 1975

Raymond H. Berglund
Clerk

Received 1 copy of the within
Appendix
this 23 day of September, 1975.

Sign _____

For: Paul J. Curran Esq (s).

Att'ys for Plaintiff Appella

PAUL J. CURRAN

